TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 44

LINDSAY AND PHELPS COMPANY, PLAINTIFF IN ERROR,

vs.

JOHN H. MULLEN AND THE STATE OF MINNESOTA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED FEBRUARY 7, 1898.

(16,791.)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 239.

LINDSAY AND PHELPS COMPANY, PLAINTIFF IN ERROR,

vs

JOHN H. MULLEN AND THE STATE OF MINNESOTA.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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1 In the Circuit Court of the United States for the District of Minnesota, First Division.

LINDSAY & PHELPS CO. (a Corporation), Plaintiff,
vs.
JOHN H. MULLEN, Defendant.

The complaint of the plaintiff shows to this court—

That the plaintiff is a corporation created, organized, and doing business under and by virtue of the laws of the State of Iowa, and is a citizen and resident of the State of Iowa.

That the defendant is a citizen and resident of the State of Minnesota and of said first division.

That said plaintiff is the owner and entitled to the immediate possession of that certain personal property which is described as follows—that is to say: Nine brails of pine logs lying and being in the Mississippi river at the town of Minneiska, county of Wabasha, State of Minnesota, more particularly described severally as—

One full brail of pine logs, numbered 2222, containing 1,064 logs, which scale 134,160 feet.

One full brail of pine logs, numbered 2228, containing 1,007 logs, which scale 132,120 feet.

One full brail of pine logs, numbered 2272, containing 1,071 logs, which scale 133,650 feet.

One narrow brail of pine logs, numbered 1030, containing 596 logs, which scale 70,650 feet.

One narrow brail of pine logs, numbered 1637, containing 658 logs, which scale 68,130 feet.

One full brail of pine logs, numbered 2304, containing 1,046 logs, which scale 138,230 feet.

One full brail of pine logs, numbered 2407, containing 1,004 logs, which scale 143,270 feet.

2–16 One full brail of pine logs, numbered 2387, containing 1,020 logs, which scale 141,380 feet.

One full brail of pine logs, numbered 2470, containing 990 logs, which scale 144,270 feet.

That the same all and singular and the possession thereof are wrongfully and unlawfully detained from said plaintiff by said defendant at the town of Minneiska, in the county of Wabasha, in the State of Minnesota; that said plaintiff has demanded and caused to be demanded of said defendant the delivery and possession thereof before the commencement of this action; but said defendant has refused and still refuses and neglects to deliver the same or any part of the same to the plaintiff, and that the same is worth and of the actual value of fifteen thousand ($15,000) dollars.

Wherefore said plaintiff demands judgment against said defendant for the immediate return and possession of the property above described, or the sum of fifteen thousand dollars ($15,000), the value thereof, in case a delivery thereof cannot be had, and two thousand

($2,000) dollars' damages for the detention thereof, besides the costs and disbursements of this action.

Dated August 7th, 1893.

THOMAS SIMPSON,
THOMAS WILSON,
Plaintiff's Attorneys.

OFFICE OF THOMAS SIMPSON, WINONA, MINNESOTA.

STATE OF MINNESOTA, } ss:
County of Winona, }

Fred S. Bell, having first been duly sworn, says that he is the agent of the plaintiff in this action, and that the foregoing complaint is true to deponent's knowledge except as to those matters which are therein stated on his information and belief, and as to those matters that he believes it to be true.

FRED J. BELL.

Subscribed and sworn to before me this 7th day of August, 1893.

THOMAS SIMPSON,
[NOTARIAL SEAL.] *Notary Public for Winona County, Minn.*

(Endorsed:) Complaint. Filed August 1, 1893. Oscar B. Hillis, clerk, by J. M. Sheardown, deputy.

* * * * * * *

17 UNITED STATES OF AMERICA, } ss:
District of Minnesota, }

I hereby certify and return that under and by virtue of the annexed writ of replevin I did, on the 11th day of August, A. D. 1893, replevy all of the property described in the annexed writ of replevin, consisting of pine logs in brails lying and being in the Mississippi river in the town of Minneiska, in said district, and took said logs into my possession, and I did then and there serve a true and correct copy of the within writ of replevin on the party in charge of said logs, to wit, David Cratt, with my return attached to said writ, by handing to and leaving said copy of the writ of replevin with him at the town of Minneiska, in said district.

And I further certify and return that I did, on the said 11th day of August, A. D. 1893, personally serve the annexed writ of replevin, with a copy of my return thereon, on John H. Mullen, the within-named defendant, by handing to and leaving with him a true and correct copy of the within writ at the city of Wabasha, in said district.

Dated August 12th, A. D. 1893.

J. C. DONAHOWER,
United States Marshal,
By T. J. SHEEHAN, *Deputy.*

Service (2).....	$4.00	
Disbursements..	68.49	being for special deputies as guards and their board.
	$72.49	

18 (Original.)

United States Circuit Court, District of Minnesota, First Division.

LINDSAY & PHELPS CO. (a Corporation), Plaintiff, *against* JOHN H. MULLEN, Defendant. } Writ of Replevin.

UNITED STATES OF AMERICA, *District of Minnesota, Third Division,* } ss:

The President of the United States of America to the marshal of the district of Minnesota, Greeting:

Whereas, the plaintiff in the above-entitled action claim- the immediate delivery of the following-described property: Nine brails of pine logs lying and being in the Mississippi river at the town of Minneiska, county of Wabasha, State of Minnesota, more particularly described severally as one full brail of pine logs, numbered 2222, containing 1,064 logs, which scale 134,160 feet; one full brail of pine logs, numbered 2228, containing 1,007 logs, which scale 132,120 feet; one full brail of pine logs, numbered 2272, containing 1,071 logs, which scale 133,650 feet; one narrow brail of pine logs, numbered 1030, containing 596 logs, which scale 70,650 feet; one narrow brail of pine logs, numbered 1637, containing 658 logs, which scale 68,130 feet; one full brail of pine logs, numbered 2304, containing 1,046 logs, which scale 138,230 feet; one full brail of pine logs, numbered 2407, containing 1,004 logs, which scale 143,270 feet; one full brail of pine logs, numbered 2387, containing 1,020 logs, which scale 141,380 feet; one full brail of pine logs, numbered 2470, containing 990 logs, which scale 144,270 feet, and the affidavit of Fred S. Bell, agent of the above-named plaintiff, has been made, showing, among other things, that said plaintiff is lawfully entitled to the possession of said property; that the same is wrongfully detained by the defendant and is of the actual value of fifteen thousand ($15,000.00) dollars, and said plaintiff has, by an endorsement on said affidavit, required the issuance of a writ, as provided by law, and duly filed said affidavit so indorsed:

Therefore we command you that if a bond with sufficient sureties shall be executed to the defendant in due form of law you take the property herein described and the same safely keep until disposed of according to law, and that you proceed herein in the manner required of you by law.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, [SEAL OF COURT.] the 11th day of August, A. D. 1893. Issued at my office in the city of Winona, under the seal of said circuit court, the day and year last aforesaid.

OSCAR B. HILLIS, *Clerk*,
By J. M. SHEARDOWN, *Deputy*.

THOMAS SIMPSON,
THOMAS WILSON,
Plaintiff's Attorneys.

[Endorsed:] No. —. United States circuit court, district of Minnesota, third division. Lindsay & Phelps Co., plaintiff, *vs.* John H. Mullen, defendant. Writ of replevin. (Original.) Returned and filed Sept. 1st, A. D. 1893. Oscar B. Hillis, clerk, by J. M. Sheardown, deputy. Thomas Simpson, Thomas Wilson, attorneys for plaintiff.

19 In the United States Circuit Court, District of Minnesota, First Division.

LINDSAY & PHELPS COMPANY (a Corporation), Plaintiff,
against
JOHN H. MULLEN, Defendant.

And now comes the defendant and, answering the complaint of the plaintiff in the above-entitled action, denies each and every allegation, matter, and thing therein contained, whether as therein stated or otherwise, save as hereinafter expressly stated, admitted, or qualified.

Said defendant admits that said plaintiff is a corporation, as alleged in said complaint, and that said defendant is a citizen and resident of the State of Minnesota and of the first division thereof. Said defendant expressly denies that he has any knowledge or information thereof sufficient to form a belief as to whether said plaintiff is or ever was the owner of the personal property described in said complaint or any part thereof, and said defendant expressly denies that said plaintiff was at the time of the commencement of this action or at any time thereafter entitled to the possession of the same, whether as alleged in said complaint or otherwise, and said defendant expressly denied that he ever at any time wrongfully and unlawfully detained said property described in the complaint, or any part thereof, from said plaintiff, whether as alleged in said complaint or otherwise, and denies that he ever detained the same or the possession thereof, or any part thereof, from said plaintiff under any other or different circumstances than as hereinafter stated; and said defendant further admits that said plaintiff demanded the delivery and possession of the property in said complaint described prior to the commencement of this action, and that this defendant refused to deliver the same or any part thereof to said plaintiff; and said defendant further alleges that since the commencement of this action the United States marshal for the district of Minnesota, duly qualified and acting and under and by
20 virtue of a writ of replevin issued out of and under the seal of said court, has seized and taken possession of that portion of the property described in said complaint which said defendant then and there had in his possession, as hereinafter stated, and, as said defendant is informed and believes and so alleges the fact to be, the said marshal after seizing and taking possession of said property under said writ, as aforesaid, turned over and delivered the same to said plaintiff.

And said defendant, further answering, denies that the property

attempted to be described in said complaint, being the property taken and held by said plaintiff as hereinafter stated, was ever worth the sum of $15,000.00 or any other or greater sum than seventy-five hundred dollars, and said defendant expressly denied that said plaintiff has ever been damaged by reason of any detention of the property detained by said defendant, as hereinafter set forth, in any amount whatsoever, whether as alleged in said complaint or otherwise.

And said defendant, further answering, alleges that he is and ever since the 17th day of April, 1893, has been the surveyor general of logs and lumber for the fourth district of Minnesota, duly appointed, qualified, and acting; that the Minnesota Boom Company is and ever since the 16th day of April, 1889, has been a corporation duly organized, created, and existing and chartered under and by virtue of the laws of the State of Minnesota; that the general nature of the business of said Minnesota Boom Company is and was at all the times herein mentioned the construction, maintenance, and use of booms, dams, and other structures of any kind necessary or advantageous to the performance of the logging and lumbering business upon the Mississippi river or either branch thereof; also upon or on any side or bank of any slough, bayou, branch, or part of said Mississippi river; also covering the gathering, *the gathering*, driving, booming, storing, assorting, rafting, brailing, and otherwise handling logs, lumber, and timber of any kind for itself and for any and all persons having logs, lumber, or timber upon the waters of said river
21 between the mouth of the Chippewa river or a point opposite thereto and the point where the easterly boundary line of the city of Winona meets the Mississippi river or a point opposite thereto, and also at divers and sundry other places; that within the limits of the county of Wabasha, in the State of Minnesota, and within said first division of said State and within the said fourth district of said State of Minnesota, as said State is laid off for the purpose of the survey and measurement of logs, lumber, and timber within said State, as provided by law, and branching out from said Mississippi river, is a large slough, about three miles in length and of at least one-quarter of a mile in width on an average at ordinary stages of water, commonly called and known as the West Newton slough; that said Minnesota Boom Company, acting under and by virtue of its said charter, duly issued and granted to it by the said State of Minnesota, and under and by virtue of the laws of said State, built and constructed several years ago and ever since said time has maintained, continued, owned, and operated a large number of booms within the limits of said slough for the purpose of collecting, gathering, storing, assorting, brailing, rafting, and handling logs, timber, a-d lumber as they should come down the Mississippi river from points above in the ordinary course of business, being all the booms in said slough contained and being the boom hereinafter referred to; that a large quantity of logs annually pass down said Mississippi river and into and through said fourth district of the State of Minnesota, and that said logs always belong to a greater

number of different owners, whose ownership is marked and distinguished one from another solely by a large number of different marks and devices, which are cut upon said logs; that there are and for many months prior to the 17th day of April, 1893, have been and ever since that time have been on file and of record in the office of this defendant, as surveyor general as aforesaid, under and pursuant to the statutes of the State of Minnesota in such case made and provided, several hundred different marks, each of a peculiar and unique character, but distinguishable one from the other
22 and indicating said different ownerships, and that the business of logging and lumbering as now and for many years last past carried on within the limits of the State of Minnesota and other adjacent State*d* has been and is necessarily and will continue to be of a nature that the ownership of all logs must be and is necessarily indicated by the marks and devices cut upon said logs, as hereinbefore set forth, and such other marks and devices as may from time to time be created and devised; that marks and devices of the character hereinbefore referred to are and for many years last past have been and will continue to be commonly used by all persons, firms, and corporations engaged in the business of logging and lumbering for the purpose of indicating the ownership of each, and for the purpose, as far as possible, of separating the property of the one owner from that of another, each owner using in all instances marks and devices other and different from those used by any other owner, and that all the logs herein and in said complaint referred to were and are marked and identified by means of such characters and devices cut upon the same, as hereinbefore set forth; that in spite of all the contrivances that the ingenuity of man has been able to devise, and owing largely to the fact that the business of logging and lumbering has grown so great and covers so much territory and such quantities of timber and logs and is engaged in by so many different persons, firms, and corporations, it is and for many years last past has been and for many years yet to come will be impossible to keep the logs of any particular firm, person, or corporation separate and distinct from the logs of any other person, firm, or corporation when the same are floating upon the waters of the Mississippi river or of any of the streams tributary thereto; that in the practical operation of the business of logging and lumbering it has been found, as the fact is, that the logs of different owners become intermingled by reason of accident, storms, carelessness, and particularly the efforts of wrong-doers, who, for the purpose of depriving the true owners of their property and their rights in and to the
23 same, take advantage of the unique nature of the property and seek to and do intermingle the said logs belonging to any one person, firm, or corporation, whose property they seek to take or control, with the logs of others; that when logs become so intermingled, as aforesaid, whether by chance or otherwise, it becomes, is, and will continue to be necessary for the various owners thereof, in order to save their respective logs and properly enjoy the use and benefit thereof, to have the same picked out and separated

one from another so far as possible, and for that purpose, among others, there has been and is built, constructed, erected, and maintained by said Minnesota Boom Company, within the limits of said State of Minnesota, and particularly within the limits of said fourth district, and in said West Newton slough, a large boom for the assorting and handling of logs, and inasmuch as the said West Newton slough is particularly well situated for said purpose, it has been taken possession of, as aforesaid, by said Minnesota Boom Company and all of the logs which come down said Mississippi river and its tributaries into said fourth district of the State of Minnesota are floated into and through said West Newton slough and into and through said booms built, erected, constructed, operated, and maintained by said boom company, as aforesaid, for the purpose of assorting, gathering, collecting, storing, brailing, rafting, and handling the same; that after said logs are assorted, as aforesaid, and while they are in said boom they are put from time to time into brails and rafts in order that they may be conveniently handled and taken from place to place upon said river and for the general convenience of the owners thereof in handling, selling, and disposing of the same.

That during the season of 1893 and up to the present time there have been passed through said boom in said West Newton slough in such manner and not otherwise about 500,000,000 feet of logs, and that said logs were and are marked by a large number of different marks, as aforesaid, and, as defendant is informed and believes and so alleges the fact to be, were owned by a large
24 number of different persons, firms, and corporations, each owning different lots.

That said logs are passed through said slough and said boom at a very rapid rate and in very great and large numbers and quantities from day to day while the season lasts and while there is sufficient water in said Mississippi river to permit said logs to run freely; that the State of Minnesota, for the purpose of protecting the people thereof and their rights in and to their property in logs, and for the purpose of preventing fraud, conversion, and wrong-doing in respect to the selling, handling, booming, measuring, brailing, rafting, gathering, and storing of said logs and the ownership thereof, has passed wise and salutary laws for the inspection, scaling, and surveying of logs, and has provided for the keeping of proper public records in respect to the same and the ownership thereof, and the marking, scaling, surveying, and inspection thereof, and for the better accomplishment of said purposes and each of them has divided said State into several districts, and has provided for the appointment of surveyors general in each of said districts to take charge of, measure, and control such inspection, scaling, and surveying, and has made it the express duty of said surveyors general and each of them, including this defendant, to inspect, survey, and scale logs in the manner provided by law and for the purposes aforesaid, and has made it the express duty of this said defendant to inspect, survey, and scale all logs which might at any time come into the booms of the said Minnesota Boom Company in said West New-

ton slough, as hereinbefore set forth; that while said logs are passing through said boom in said slough they are gathered together into brails and rafts and thereafter towed and floated down the Mississippi river to be used for commercial purposes, and are oftentimes sold in bulk in the rafts, and in case of such sales the purchasers, as a general rule, are obliged to rely for the quantities in such brails and rafts contained upon the scaling, survey, and measurement made at said boom at the time said brails and rafts are made up; that when logs passing through said boom are scaled, surveyed, and measured
25 by parties interested therein it has been found, as the fact is, that many errors and mistakes creep in, and it oftentimes occurs that such mistakes are made purposely, so that rafts and brails when made up, as aforesaid, do not correctly and accurately show the quantities of logs actually therein, although they nominally purport so to do; that said boom company is and was at all the times herein mentioned owned and controlled by persons and individuals who are engaged in and pecuniarily interested in the business of logging and lumbering, and from time to time it becomes and is for pecuniary interest of said boom company and those interested therein that correct measurement, surveying, and scaling of logs passing through said boom should not be made, and in many instances said boom company and persons interested therein have prevented and endeavored to prevent true and correct measurements, surveying, and scaling from being made through the persons duly authorized by laws so to do, particularly including this defendant; that after said brails of logs are made into rafts at said booms they are oftentimes towed down said Mississippi river, and compensation is paid therefor to the steamers and towing companies for such towing, and said compensation is based upon the amount of timber in said rafts and each of them; that in a great many instances rafts of logs are made up in said boom to be taken down and the same are taken down said river to be sawed at mills owned or controlled by persons pecuniarily interested in or controlled by said boom company or owned by corporations, persons, or firms closely allied to said boom company and its owners and stockholders and whose pecuniary interests are substantially identical with those of the owner of said boom, and it frequently occurs that where said rafts are towed down said river from said booms to mills so owned, operated, and controlled, as aforesaid, that the logs in said rafts are scaled by or at the instance of persons, firms, or corporations interested in having them appear to contain as small a quantity as possible, with the effect that they do show, when so scaled, a less quantity of logs therein than actually exists, and in other cases
26 where the logs in said rafts are to be sold and disposed of in the market they are scaled or caused to be scaled by the parties interested therein so as to make it appear that the logs in said rafts are much greater in quantity than is actually the case.

That the only way to prevent such errors and mistakes as herein set forth, whether the same be intentional or otherwise, and to obtain a true and correct scale of logs passing through said booms is to have a scale and survey made thereof by some competent, responsible,

and disinterested person, whose duty it is to make the same carefully and correctly, and that, realizing this fact, the legislature of said State has duly passed said laws in relation to surveying and scaling as hereinbefore referred to, by which it is made the express duty of this defendant in his district and other surveyors general in their respective districts in said State to make an official scale and survey of the logs coming into such boom or booms of a similar nature within their respective districts, and, furthermore, to keep a true and correct public and official record of all acts done and proceedings had and taken in connection with such scaling, and that said law has in all respects proved to be of great benefit to the people of this State and of other States.

That the logs which passed through said boom at said West Newton slough are cut upon the banks of said Mississippi river and its tributaries, including the logs in question herein, and are floated down said stream by the owners thereof in the ordinary course of business for the purpose, among other things, of transporting them to mills, when they are sawed into lumber, and also for the purpose of marketing them; that as said logs are so floated down said streams it has been found to be, as the fact is, that it is for the best interests of the owners thereof and all persons, firms, and corporations interested therein that they should be gathered together in some safe and convenient place and assorted, brailed, and handled, as aforesaid, and that they should then and there be scaled, surveyed, measured, and inspected for the purpose, among other things, as aforesaid, of ascertaining the amount of merchantable lumber in each log contained and keeping a true and correct
27 record, description, and account thereof, and the ownership and possession thereof for the benefit of the owners thereof, and all persons, firms, or corporations interested therein in case of loss and otherwise, and that said boom in said slough has been particularly recognized and selected as the safest and most convenient spot on said streams to handle, assort, and measure said logs, as aforesaid, and for a number of years last past it has been used exclusively for such purposes, as aforesaid, and when said logs are first cut down and put into said streams the owners thereof understand and know, and said plaintiffs in said action, if they owned said logs, well knew and understood when they were floated down said streams that they were and are to be floated through said slough and said booms for the purpose aforesaid, and that they will be gathered, assorted, brailed, and handled, and that they must be measured, scaled, and surveyed therein for the purposes aforesaid, and that under and pursuant to the laws of said State of Minnesota true and correct public records of the scaling, surveying, measuring, and marking of said logs and the numbers and quantities thereof, with the quality of merchantable lumber in each, would and will be kept.

And said defendant, further answering, alleges that said logs run through said boom in said West Newton slough in such large quantities and with such a diversity of ownership that it has been and is absolutely impossible for the surveyor general of said fourth dis-

trict to personally perform all the work and duties laid upon him' and it is and has been necessary during all the term of office of said defendant for him, as such surveyor general, to employ a large force of men and deputies in and about said work in order to carry on the same, and that it has become and was necessary for him during his said term of office to build a large and expensive camp to care and provide for said men, and that this defendant has been obliged to and has paid out and expended in and about the scaling and surveying of said logs running through said boom during his term of office and in caring for his said men and deputies a very large sum of money.

28 And said defendant, further answering, alleges that in the month of May, 1893, said defendant scaled and surveyed 38,716,510 feet of logs running out of said boom in the manner provided by law, and at the end of said month this defendant duly made out and delivered to the owners of said boom and the managing agent thereof a true and correct scale bill, stating the date of such survey, the number of logs so surveyed and measured, the marks thereon, respectively, and the number of feet of each mark so surveyed during said month and duly signed the same under his hand and seal, and thereupon immediately recorded such bill in the books of his office kept, as aforesaid, all in the manner provided by law, and before the delivery of said scale bill, as aforesaid, and for the purpose of securing to this defendant the payment of his fees, as provided by law, this defendant duly affixed to said scale bill a true statement of the amount due him thereon, to wit, the sum of $1,935.32, and that he scaled such logs relying upon such lien, and that he claimed a lien thereon for such amount and the costs of collection, and thereupon this defendant, as such surveyor general, duly took actual possession of the logs in said complaint referred to and scaled by him, as aforesaid, viz., brail numbered 2222, and referred to in said plaintiff's complaint herein, and that said brail then and there contained 1,020 logs, which scaled 125,320 feet, and also brail number 2228, referred to in plaintiff's said complaint herein, which then and there contained 993 logs, which scaled 126,880 feet, and also brail numbered 2272 and referred to in said plaintiff's said complaint herein, which then and there contained 1,052 logs, which scaled 128,240 feet, and also that certain brail numbered 1030, referred to in plaintiff's said complaint herein, which then and there contained 541 logs, which scaled 63,120 feet, and that certain other brail of logs numbered 1637 and referred to in plaintiff's said complaint herein, which then and there contained 554 logs, and which scaled 67,350 feet, and also that certain other brail of logs numbered 2304 and referred to in plaintiff's said complaint herein, which then and there contained 1,057 logs, which scaled 134,430 feet, and that certain other brail of logs num-

29 bered 2407 and referred to in plaintiff's said complaint herein, which then and there contained 996 logs, and which scaled 137,170 feet, and also that certain other brail of logs numbered 2387 and referred to in plaintiff's said complaint herein, which then and there contained 965 logs, which scaled 130,000 feet, and that

certain other brail of logs numbered 2470, referred to in plaintiff's said complaint herein, which then and there contained 980 logs, which scaled 137,270 feet; that each of the said brails contained the said number of logs and the said number of feet hereinbefore set forth, and no more.

And that said logs and each and every part thereof were duly retained by him as such surveyor general as aforesaid up to the time of the commencement of this action, when they were taken by the United States marshal under his said writ issued herein as hereinbefore set forth and not otherwise; that each and every of said logs was duly surveyed and measured by this defendant, and that in surveying and measuring the same and each and every thereof this defendant made such allowance for hollow, rotten, and crooked logs as would reduce and make them equal to good and sound and straight merchantable logs, and at the time of making such survey and said measurement this defendant duly entered the figures showing such survey in pass books kept for that purpose, and that said books have been preserved and filed by this defendant in his office for the inspection of all persons interested therein, and this defendant in scaling and measuring said logs and each and every thereof used in making said survey and measurements what is known as Scribner's rule and was governed thereby in each instance in making his said survey and measurements, and that every log surveyed by him as aforesaid was so surveyed by the largest number of even feet which it contained in length over ten feet and under twenty-four feet, and all logs of 24 feet length or more were duly surveyed by him as two logs or more.

And said defendant, further answering, alleges that in the month of June, 1893, said defendant scaled and surveyed 183,062,290 feet of logs running out of said boom, in the manner provided by law, and at the end of said month this defendant duly made out and delivered to the owners of said boom and the managing agent thereof a true and correct scale bill stating the date of such survey, the number of logs so surveyed and measured, the marks thereon respectively, and the number of feet of each mark so surveyed during said month, and duly signed the same under his hand and seal and thereupon immediately recorded such bill in the books of his office, kept as aforesaid, all in the manner provided by law, and before the delivery of said scale bill as aforesaid and for the purpose of securing to this defendant the payment of his fees as provided by law this defendant duly affixed to said scale bill a true statement of the amount due him thereon, to wit, the sum of $9,153.10, and that he scaled such logs relying upon such lien, and that he claimed a lien thereon for such amount and the costs of collection, and thereupon this defendant, as such surveyor general, duly took actual possession of the logs hereinbefore and in said complaint referred to, being the same logs scaled by him as aforesaid, and that said logs and each and every part thereof were duly retained by him as such surveyor general as aforesaid up to the time of the commencement of this action, when they were taken by the United States marshal under his said writ issued herein as here-

inbefore set forth, and not otherwise; that each and every of said logs was duly surveyed and measured by this defendant, and that in surveying and measuring the same and each and every thereof this defendant made such allowance for hollow, rotten, and crooked logs as would reduce and make them equal to good, sound, and straight merchantable logs, and at the time of making such survey and said measurement this defendant duly entered the figures showing such survey in pass books kept for that purpose, and that said books have been preserved and filed by this defendant in his office for the inspection of all persons interested therein, and this
31 defendant in scaling and measuring said logs and each and every thereof used in making said survey and measurements what is known as Scribner's rule and was governed thereby in each instance in making his said survey and measurements, and that every log measured by him as aforesaid was so surveyed by the largest number of even feet which it contained in length over ten feet and under twenty-four feet, and all logs of 24 feet length or more were duly surveyed by him as two logs or more.

And said defendant further alleges that at the time of the commencement of this action and the taking of said logs by said marshal, as hereinbefore set forth, this defendant was claiming said logs and holding and retaining the same under and by virtue of his said lien, and that neither said plaintiff nor any one else had any right, power, or authority to take the same or any thereof until they had paid to this defendant the sum of $11,088.92, being the amount due said defendant for services on said logs, together with ten per cent. thereof, to wit, the sum of $1,108.89, costs of collection, as provided by law, and that said defendant has claimed at all times herein mentioned since the original taking of said logs by him, the said defendant, as aforesaid, and each and every part thereof, and still claims a lien upon said logs and each and every part thereof for the amounts hereinbefore specified.

Wherefore said defendant prays a return of said property and each and every part thereof, or if that cannot be had that he have and recover from said plaintiff the amount of $12,197.81, with interest thereon, and also the costs and disbursements of this action.

Aug. 11, 1893.

J. F. McGOVERN &
WARNER, RICHARDSON & LAWRENCE,
Attorneys for Defendant, St. Paul, Minnesota.

32 STATE OF MINNESOTA, } ss:
County of Ramsey, }

John H. Mullen came before me personally, and, being duly sworn, doth say that he is the defendant in the above-entitled action; that the foregoing pleading is true of his own knowledge except as to matters which are therein stated on his information and belief, and as to those matters he believes it to be true.

JOHN H. MULLEN.

Subscribed and sworn to before me on this 31st day of August, 1893.

HARRIS RICHARDSON,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

(Endorsed:) Answer. Filed Aug. 31st, 1893. Oscar B. Hillis, clerk, by J. M. Sheardown, deputy.

33 United States Circuit Court, District of Minnesota, First Division.

LINDSAY & PHELPS COMPANY (a Corporation), Plaintiff,
vs.
JOHN H. MULLEN, Defendant. } Reply.

Plaintiff replies to the new matter in the answer.

First. That, except as hereinafter admitted, it denies the same and each and every allegation and part thereof.

Second. It admits and avers that since the commencement of this action the United States marshal, as by law he was required to do, took from the possession of defendant the property described in the complaint and delivered the same to the plaintiff; that there is at and opposite the county of Wabasha, in the State of Minnesota, a short distance below the mouth of the Chippewa river, an arm of the Mississippi river called and know- as West Newton slough, through and into which annually flow and pass logs in great numbers and of many different marks, and many of said logs are there made into brails or rafts, as hereinafter more fully and particularly alleged.

Third. That this defendant has for many years last past owned and operated a saw-mill at the city of Davenport, Iowa, on the bank of the Mississippi river, and he and a number of other persons owning saw-mills on the bank of said river below the mouth of the said Chippewa river, in the States of Minnesota, Wisconsin, Iowa, Illinois, and Missouri, have found it necessary for a number of years last past to obtain and have obtained line logs, to be manufactured into lumber at their mills, on lands adjacent to the Chippewa river in the State of Wisconsin, and they have floated or driven or transported said logs down said last-named river into the Mississippi river and down the Mississippi river to their respective mills; that it is not practicable to drive or transport said logs down the said Chippewa river in brails or rafts or otherwise than loose or
34 down the Mississippi river otherwise than in brails or rafts, and it has been found to be much more economical for the owners of said saw-mills and logs to co-operate in the driving and transporting of their logs to their mills than to do the same separately.

That therefore, solely to facilitate the driving and transporting of said logs and as a matter of economy, many of the owners of said mills upon the bank of the Mississippi river below the mouth of the Chippewa river a number of years ago organized and incorporated,

in the State of Iowa, a company known and styled as the Mississipp River Logging Company, and the said last-named company, before the transaction referred to in the complaint, caused to be organized in the State of Minnesota a company known as the Minnesota Boom Company; that said boom company was organized with the understanding, belief, and hope that the United States would sanction, approve, and authorize the operation of the same at and in said arm of the Mississippi river called West Newton slough, but the United States did not approve or authorize the same, but, on the contrary, refused and declined to do so; that said boom company has not erected nor has it maintained any piers or structures in said river; that all such piers, booms, or structures as have been erected or maintained in the name of said boom company in or near said river were erected and have been and are maintained by and at the expense of the said Mississippi River Logging Company and solely and only to facilitate the speedy and economical floating and transporting of the logs of its stockholders down the said river to their respective mills, and all the structures, works, and property in said slough and all the riparian and other rights there owned or used for the holding, rafting, or brailing of logs or for facilitating the floating or transporting of the logs down the said river were purchased or erected by, and ever since have belonged to, the said Mississippi River Logging Company, and said structures, booms, piers, and works in said river are only permitted by the United States to remain there by sifference and subject to be removed at any time; that neither the said boom company nor said Mississippi River Logging Company nor any one has ever had any legal right or authority to drive or float into said slough or arm of the river or to there keep, detain, or hold, in any boom or otherwise, or to there brail or raft any logs of any other person without such person directing or authorizing them so to do or consenting thereto.

Fourth. That said Mississippi River Logging Company and certain lumber manufacturers at or near Eau Claire, in the State of Wisconsin, before the transaction in the complaint referred to, solely for the purpose of aiding in the speedy and economical driving and transporting of their logs from the said Chippewa river, in the State of Wisconsin, to their respective mills, caused to be organized and incorporated in the State of Wisconsin a company known as and styled the Chippewa Logging Company, by or in whose name logs were purchased for its respective stockholders in proportion to the stock owned or money contributed by each, and each was entitled to receive of such logs so purchased an amount or number of feet to be ascertained according to a plan or arrangement agreed upon between them, as hereinafter more fully stated, proportionate to his contribution to the capital or money so used, and the said Mississippi River Logging Company also purchased and held in its name logs for its several stockholders in proportion to the sum by them respectively contributed; that logs purchased and held in the name of the Chippewa Logging Company were delivered to its respective stockholders, viz., to those owning mills on

the bank of the Chippewa river, as the logs floated down said river or past their said mills, and to the Mississippi River Logging Company after said logs floated down said Chippewa river below Eau Claire, and ordinarily at said arm of the Mississippi river called West Newton slough; that the stockholders of the said Chippewa Logging Company and of the said Mississippi River Logging Company agreed and arranged among themselves that the number of feet of logs to be delivered to each should be measured and determined according to a plan or rule agreed upon and adopted by them, and which was found to be equitable, just, and con-
36 venient; that each and every of the arrangements and acts or things done, as aforesaid, was made and done solely to aid in the speedy, economical, and uninterrupted transportation of the said logs from the place in Wisconsin where they were purchased and cut, as aforesaid, to the mills of the owners, and solely and only as a means to that end; and, the arrangements aforesaid having been found to be great aids in the speedy and economical transportation of the logs down said rivers, certain individual sawmill owners at times hired the said Mississippi River Logging Company to drive or transport logs owned by them down said rover to their respective mills.

Fifth. That this plaintiff, prior to the transaction in the complaint and answer set forth, was owner of the logs described in the complaint, at the head-waters of the said Chippewa river, which the said Mississippi River Logging Company agreed with this plaintiff to drive and transport down said Chippewa river and to said West Newton slough and there to brail and raft and deliver them to this plaintiff, which it did, which logs so then and there delivered to this plaintiff are the very logs in question in this suit.

Sixth. That when the said logs were put into the Chippewa river at the place where they were purchased, as aforesaid, it was intented and understood by all parties interested thereon or having charge or control of the same that they should be, and but for the illegal seizure and detention thereof by the defendant they would have been, transported and floated to the mills at which they were to be manufactured, as aforesaid, without delay, stoppage, or interruption, except so far as the same might be necessary to do such acts as should be required in order to float, drive, or transport them safely and expeditiously to their destination.

Seventh. That of all the logs passing through said West Newton slough at least ~~thirty~~-nine per cent. were and are floated out of said State of Wisconsin down said Chippewa river, and at least eighty per cent. thereof were and are destined for and floated or transported to points outside of said States of Wisconsin or Minnesota.

37 Eighth. That defendant claims to have been at all the times referred to one of the surveyors of logs of the State of Minnesota, appointed for the district of which the county of Wabash is a part, and claims to have scaled or measured said logs, and he took possession of them and held and claims the right to hold them, not only for the fees which he alleged were due for scaling

them, but also for the fees which he claimed to be due for the scaling of many millions of feet of other logs in said slough.

Ninth. That neither the plaintiff nor any one having any interest in or control or dominion over or any right to such control or dominion of said logs requested or authorized defendant to measure or scale the same or consented that he should do so, nor did nor does any law of the State of Minnesota give him any right or authority to scale or measure them or any logs passing through said West Newton slough or give him any lien upon them for scaling or measuring them or for scaling or measuring any other logs, nor under the laws or Constitution of the United States had or has the State of Minnesota any right, authority, or power nor could it have any authority or power to authorize the defendant or any other State officer to scale or measure said logs at the expense of the plaintiff or to obtain a lien upon them or detain or hold them for such scaling; that the transporting of such property from one State to another in commerce between the States, and therefore can only be regulated by Congress, and no State can legally in any manner interrupt or interfere with or burden or tax the same.

Tenth. That the said Chippewa river and the said Mississippi river are, and each of them is, navigable waters of the United States, and have been taken control of and are, and for many years last past have been, regulated and improved at great expense by the United States, and the said arm of the Mississippi river called West Newton slough is a navigable arm of said river, and neither the State of Minnesota nor any other State past which said Mis-
38 sissippi river flows had or has any right to interfere with the navigation or improvement thereof.

THOMAS SIMPSON,
THOMAS WILSON,
Plaintiff's Attorneys, Office of Thomas Simpson, Winona, Minn.

STATE OF MINNESOTA, } ss:
County of Winona, }

Thomas Simpson came before me personally, and, being duly sworn, doth say that he is the plaintiff's attorney in the above entitled action; that the foregoing reply is true to the best of his knowledge, information, and belief, and that the reason why this verification is not made by said plaintiff is that it is absent from the county of Winona, Minnesota, where resides its said attorney.

THOMAS SIMPSON.

Subscribed and sworn to before me on this 26th day of September, A. D. 1893.

[NOTARIAL SEAL.] A. W. LAIRD,
Notary Public in and for Winona County, Minnesota.

(Endorsed:) Reply. Filed Sept. 27th, 1893. Oscar B. Hillis, clerk, by J. M. Sheardown, deputy.

39 United States Circuit Court, State of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, a Corporation, Plaintiff,
vs.
JOHN H. MULLEN, Defendant.

Now comes the State of Minnesota, and for answer to the complaint of the plaintiff in the above-entitled action adopts the answer of the defendant Mullen as its answer so far as applicable.

Further answering, the State of Minnesota alleges that on the 12th day of February, A. D. 1895, the said defendant, Mullen, duly assigned, transferred, and delivered to the State of Minnesota all his right, claim, and interest in said cause of action against the said plaintiff and his right to the property described in plaintiff's complaint; that ever since said date the State of Minnesota has been the owner and holder of said claim, interest, right, and title to the property described in the complaint by virtue of said assignment, and is still the owner thereof; that no part of the fees for services rendered, which are fully set forth in the defendant's answer, have been paid to the State of Minnesota.

Wherefore the State of Minnesota demands judgment for the return of said property, or, if that cannot be had, that it recover from said plaintiff the sum of $12,197.81, with interest, together with its costs and disbursements.

H. W. CHILDS,
Attorney General, and
GEO. B. EDGERTON,
Att'ys for State of Minnesota.

40-59 STATE OF MINNESOTA, *County of Ramsey,* } *ss:*

H. W. Childs, being first duly sworn, deposes and says that he is the attorney general of the State of Minnesota and one of the attorneys in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true, except as to matters therein stated on information and belief, and as to them he believes it to be true.

H. W. CHILDS.

Subscribed and sworn to before me this 14th day of August, A. D. 1897.

[NOTARIAL SEAL.] ANDREW ——,
Notary Public, Ramsey Co., Minn.

(Endorsed:) Answer of State of Minnesota. Filed Aug. 16th, 1897. Henry D. Lang, clerk.

* * * * * * *

60 *Term Minutes, June Term, A. D.* 1897.

United States Circuit Court for the District of Minnesota.

AUGUST 19TH, 1897.

LINDSAY & PHELPS COMPANY
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA. } E. Law. 1153.

Thereupon it is considered, ordered, and adjudged that the above-named plaintiff take nothing by this its action, and that the above-named defendants, The State of Minnesota and John H. Mullen, do have and recover of and from the above-named plaintiff, Lindsay & Phelps Company, the return of the following-described property, to wit:

"One full brail of pine logs, numbered 2222, containing 1,064 logs, which scale 134,160 feet;

One full brail of pine logs, numbered 2228, containing 1,007 logs, which scale 132,120 feet;

One full brail of pine logs, numbered 2272, containing 1,071 logs, which scale 133,650 feet;

One narrow brail of pine logs, numbered 1030, containing 598 logs, which scale 70,650 feet;

One narrow brail of pine logs, numbered 1637, containing 658 logs, which scale 68,130 feet;

One full brail of pine logs, numbered 2304, containing 1,046 logs, which scale 138,230 feet;

One full brail of pine logs, numbered 2407, containing 1,004 logs, which scale 143,270 feet;

One full brail of pine logs, numbered 2387, containing 1,020 logs, which scale 141,380 feet;

One full brail of pine logs, numbered 2470, containing 990 logs, which scale 144,270 feet;"

or in the failure to return said property that the above-named defendants do have and recover of and from the above-named plaintiff the sum of $13,197.81, with interest thereon, at the rate of 7 per cent. per annum, from the 11th day of August, 1893, amounting to the sum of $3,434.32, and amounting in the aggregate to the sum of $15,632.13, together with its costs and disbursements herein, to be taxed, and that it have execution therefor.

Thereupon, upon motion of plaintiff's attorney, it is ordered that execution herein be, and the same hereby is, stayed for the period of forty-two (42) days from and after the date hereof.

(Entered, Term Minutes, vol. 16, page 124.)

61 Circuit Court of the United States, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff,
vs.
JOHN H. MULLEN and STATE OF MINNESOTA, Defendants.

Petition for a New Trial.

To the honorable the circuit court of the United States for the district of Minnesota, third division, and the judges thereof:

The plaintiff in the above-entitled action respectfully petitions this honorable court and the judges thereof for a new trial in said action upon the following grounds:

First. That the findings and judgment in said action are not, nor are either of them, justified by the evidence, and that they are both contrary to law.

Second. Errors in law occurring at the trial and excepted to by the plaintiff.

Third. That the judge who tried said cause should have found for the plaintiff.

Fourth. No findings by the court, either special or general, sufficient to support the judgment in said cause have ever been made.

Fifth. For errors in law committed by the court in its final decision of said cause, and for divers other grounds of error appearing in the record of said cause and in the bill of exceptions, which is hereby made a part of this petition.

Said motion will be made and founded upon this petition, th pleadings, files, records, and all the papers in said cause, togeth with the settled bill of exceptions and the stenographer's minutes f the evidence, all of which will be read on said motion by plaintiff's counsel in support of the same.

THOMAS SIMPSON,
CLAPP & MACARTNEY,
Attorneys for Plaintiff.

62 DISTRICT OF MINNESOTA, *ss:*

Newel H. Clapp, being by me first duly sworn, says that he is one of the attorneys for the plaintiff in the above-entitled action; that the foregoing petition is true and is made in good faith and not for the purpose of delay.

NEWEL H. CLAPP.

Subscribed and sworn to before me this 27th day of September, A. D. 1897.

BELLA C. RANKIN,
[NOTARIAL SEAL.] *Notary Public, Ramsey County, Minn.*

July General Term, 1897.

Present: Hon. William Lochren, judge.

I hereby certify that I have read the foregoing petition for a new

trial made by the plaintiff in the foregoing-entitled action, and that I allow the same to be filed in said action in this court.

Dated September 28, 1897.

WM. LOCHREN, *Judge.*

(Endorsed:) Petition for new trial. Filed Sept. 28th, 1897. Henry D. Lang, clerk, by Louise B. Trott, deputy.

63 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff,
vs.
JOHN H. MULLEN and STATE OF MINNESOTA, Defendants.

The plaintiff's motion for a new trial having this day come on to be heard upon the petition therefor filed herein and the minutes of the court, and the court having heard and considered the arguments of counsel, it is hereby—

Ordered that said motion be, and the same is hereby, denied.

Dated this 8th day of January, A. D. 1898.

WM. LOCHREN,
District Judge.

(Endorsed:) Order denying motion for a new trial. Filed Jan'y 8th, 1898. Henry D. Lang, clerk.

64 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff,
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA, Defendants.

GENTLEMEN: You will please take notice that attached hereto is the plaintiff's proposed bill of exceptions in the above entitled cause.

Dated Nov. 11th, 1897.

THOMAS SIMPSON &
CLAPP & MACARTNEY,
Plaintiff's Attorneys.

To Messrs. Warner, Richardson & Lacrence, attorneys for defendants, and to Hon. H. W. Childs, attorney general.

65 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff,
vs.
JOHN H. MULLEN and STATE OF MINNESOTA, Defendants.

Bill of Exceptions.

The above-entitled action, being then pending against the defendant John H. Mullen alone, came on for trial before the Hon.

William Lochren, United States district judge for the district of Minnesota, at a regular term of the United States circuit court held at St. Paul, Minnesota, on the 11th day of August, A. D. 1897, a jury having been waived and the case tried by the court pursuant to the written stipulation of all parties.

Messrs. Clapp & Macartney and Thomas Simpson, Esq., appeared for the plaintiff.

Messrs. Warner, Richardson & Lawrence for the defendant.

Hon. H. W. Childs, attorney general of the State of Minnesota, appeared and made the following statement:

This case grows out of an attempt made by the surveyor general of the district of Minnesota to inspect and survey certain logs during the months of May, June, July, and August during 1893, and he attempted to secure the payment of his fees by the seizure of a certain quantity of logs. These logs were replevined by the plaintiffs in the several actions. The claim of the surveyor general, Mr. Mullen, the defendant here, was assigned to the State of Minnesota in consideration of an appropriation made by the State of Minnesota to him by the legislative session of 1895. I therefore move that the State of Minnesota be made a party to this action.

Counsel for the plaintiff consented to the granting of said
66 motion, provided the fact that the State of Minnesota has been made a defendant shall not in any way prejudice any rights that the plaintiffs might have in this case if the State of Minnesota had not been made a defendant.

The COURT: The State, I suppose, has no claim except as the assignee of the defendant?

Mr. CHILDS: That is all, as I understand it. I appear for the State and Mr. Edgerton also.

The COURT: You may file such papers as are necessary to carry this agreement into effect.

Thereupon the attorney general, on behalf of the defendant State of Minnesota, made and filed the following answer:

STATE OF MINNESOTA:

United States Circuit Court, Third Division.

LINDSAY & PHELPS COMPANY, a Corporation, Plaintiff,
vs.
JOHN H. MULLEN, Defendant.

Now comes the State of Minnesota, and for answer to the complaint of the plaintiff in the above-entitled action adopts the answer of the defendant Mullen as its answer, so far as applicable.

Further answering, the State of Minnesota alleges that on the 12th day of February, A. D. 1895, the said defendant, Mullen, duly assigned, transferred, and delivered to the State of Minnesota all his right, claim, and interest in said cause of action against the said plaintiff and his right to the property described in plaintiff's complaint; that ever since said date the State of Minnesota has been

the owner and holder of said claim, interest, right, and title to the property described in the complaint by virtue of said assignment, and is still the owner thereof; that no part of the fees for services rendered, which are fully set forth in the defendant's answer, have been paid to the State of Minnesota.

Wherefore the State of Minnesota demands judgment for the return of said property, or, if that cannot be had, that it recover from said plaintiff the sum of $12,197.81, with interest, to-
67 gether with its costs and disbursements.

H. W. CHILDS,
Attorney General, and
GEO. B. EDGERTON,
Att'ys for State of Minnesota.

STATE OF MINNESOTA, } ss:
County of Ramsey, }

H. W. Childs, being first duly sworn, deposes and says that he is the attorney general of the State of Minnesota and one of the attorneys in the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true, except as to matters therein stated on information and belief, and as to them he believes it to be true.

H. W. CHILDS.

Subscribed and sworn to before me this 14th day of August, A. D. 1897.

ANDREW ERWIN, [SEAL.]
Notary Public, Ramsey Co., Minn.

(Endorsed:) Answer of State of Minnesota. Filed Aug. 16th, 1897. Henry D. Lang, clerk.

Thereupon plaintiff, to maintain the issues on its part, offered in evidence the deposition of STANLEY CAMPBELL, who testified as follows:

I live at Swan River, Minnesota. My business is scaling logs. I have been engaged in that business ten or twelve years.

I was in the employ of the Chippewa Logging Company, scaling logs at West Newton slough, in the summer of 1893. I had been there two summers before for Mr. Smith, and I was scaling one summer for McKenzie, not at West Newton, but on the same
68 works, at Beef slough. I worked there during the entire rafting season of 1893.

An outside party's logs are scaled straight and sound; pool logs we scale full.

By pool logs I mean Chippewa Logging Company's logs, and outside logs are logs belonging to all parties other than the Chippewa Logging Company.

By scaling full I mean for the full contents—what is in the logs—what the rule gives us—without any reference to the character of the log, no matter what it is.

By scaling straight and sound I mean give the sound contents of

the log, whatever I think is in the log of merchantable lumber, making such deductions as I think necessary for rot, crook, and other defects, whatever I see.

I did not put down anywhere a memorandum of the amount and mark of each log that I scaled. The tallyman did. The duties of the tallyman are to take the amount of the logs as we call them to him and set them down under the marks that we call on a piece of paper called a tally-sheet.

There is one tallyman to two scalers. The three men work together all the time.

Q. Now, it appears that you scaled or assisted in scaling three brails of logs that are in dispute in this case—brails number 2222, 2304, and 2387. Have you any personal recollection whether you scaled those logs or not—those brails?

A. I know I scaled on that chance through there where those logs run.

I don't mean the logs in this particular number of brails. I know I scaled there.

The witness was then shown the original tally-sheets of
69 the three brails above mentioned. He testified:

I recognize the marks of logs that are put down there. I remember scaling logs of those marks. These logs are what I have denominated as outside logs. I know they are outside logs by the marks.

If I scaled the logs that are put down on that tally-sheet I scaled them straight and sound. If I scaled the logs which are put down on that tally-sheet or any of them I called out to the tallyman accurately the amount of feet, as I determined it to be, in each log, and the marks which I found upon it.

The tallyman, in order that we may know whether or not he understands what is called out to him when we call him the number, he answers it right back to us. We call him the mark, then the number of feet that is in the log, and he answers right back.

In scaling, in order that the scalers do not get mixed up and one man scale the other man's logs, one commences on one side of the tier of logs and one on the other, and we work towards each other, and when we get towards the center we tell each other which log we have got. Then we start right from the center and go back to the outside again.

One man works on one side of the center and one on the other, one on each side of the brail.

We always try and hunt for the right mark; we don't ever give a mark unless it is right; at least we don't intend to.

I had been familiar with the marks which were used on logs cut on the Chippewa river at that time—in the summer of 1893—possibly ten or twelve years.

In the brails of outside logs, such as there were, if we found a log worthless the mark is put down and it is culled—marked as a
70 cull. We do not scale it to the mark; don't put any amount down; just cull it.

In calling out the amount of feet in a log we do not call out the

full amount. We leave the cipher off. I mean by that, twenty-one, that would be two hundred and ten. We put down the twenty-one and leave off the ten. We leave off the cipher that represents the unit.

On cross-examination the witness testified as follows:

I was working for the Chippewa Logging Company. L. P. Smith hired me. He is the man that looks after the scaling there—the man that hires us. I suppose he works for the Chippewa Logging Company. I cannot answer how I know. I do know. He may have worked for a dozen other people that season, for all I know. I don't know. I don't think when he hired me, I might have worked for a dozen people.

The fact that Mr. Smith hired me is not the only reason I have for thinking he worked for the Chippewa Logging Company. The reason I know is that Mr. Smith hired and the Chippewa Logging Company paid me in cash. Mr. Smith paid me. I know I was working for the Chippewa Logging Company, because Mr. Smith said so.

I can't tell you the members of the Chippewa Logging Company. Mr. Frederick Weyerhaeuser is one. I think he lives in St. Paul. I don't know what he has to do with the company. I have seen his name as a member of the company on the bill-heads and other places. That is all I know about it.

Mr. Smith hired me in the spring of 1893. I can't just remember where. There wasn't anything said when he hired me, just that it was understood that I worked there summers, and he told me what time to be ready to go to work at West Newton.

71 There was nothing said about the amount of pay. I knew what we generally got. I had worked for Mr. Smith two summers before.

By outside logs I mean other logs than pool logs or company logs. By pool logs I mean the Chippewa Logging Company logs. The reason why I call them pool logs is that that is the name we got for them. That is what everybody calls them that works down there. I don't know why. I might have heard, but if I have I have forgotten what it is. I presume they do call them Chippewa Logging Company logs, possibly; that is only an expression they use—"pool logs." I can't tell when I first heard it. We call the logs down there pool logs and outside logs and company logs. Company logs are the Mississippi River Logging Company logs, as I understand it. Possibly that is another of Mr. Weyerhaeuser's companies.

I was not working for the Mississippi River Logging Company. I was working for the Chippewa Logging Company, so far as I know.

There are no other kinds of logs except outside logs, pool logs, and company logs. I am just as sure of that as I am of all the other matters that I have testified to.

I scaled on all kinds of logs—on all marks of logs that run in there.

I can't tell you whether it is because the Mississippi River Log-

ging Company is in the pool, and the Chippewa Logging Company is in the pool, that there are called pool logs.

I don't remember when I began work there that season. I can't tell exactly when I quit; think it was in August, some time.

I used the Lufkin rule. I distinguish outside logs from pool logs by the marks on the log. We see the mark on the log
72 and know whether it is a pool log or an outside mark. I know by the mark on the log what is an outside log and what is a pool log. I know because I know what marks belong to the pool and what marks belong to the outside logs. I know by looking at them. When I see a mark on a log I know where it belongs.

If you took me out on the river and showed me a log with a mark on it I could tell where it belongs. I get familiar with the log marks by working on them and learning them. I learn them by looking at the logs with the marks. I first saw a log with a pool mark on it the first year there was a pool log put out. I can't remember what year that was. I can't say how the first log I saw with a pool mark was marked. I knew it was Chippewa Logging Company's logs, because I was working for them; was working on the South fork of the Flambo river. I forget whether that is in Sawyer or Taylor county.

I don't claim to be an expert. I don't think I can tell you offhand if I was taken out into any stream in Minnesota and shown a log with a mark on it who owns that log. There was a time when I had not seen a pool log. I learned the mark by looking. We always get all pool marks when anybody gives them to us. I know where we get the marks in the spring. Mr. Smith gives us the new pool marks in the spring. I can't tell when he gave them to us in the spring of 1893; not until we went to work. I don't know where the list is. The list was made of just the marks on a paper. After I got the paper I took the marks off and put them in a book. I carry that book. I don't know whetherI have got that book now; can't tell you what I did with it. The marks varied from spring to spring. All I knew about the marks was when they gave me the new marks. All I knew was what Mr. Smith told me. I
73 did not say so in the first place, because you did not ask me.

We scaled some of these logs straight and sound and others full, because that is our instructions. I can't tell you why these were our instructions. When I scale a log straight and sound I scale it something by guess. I get about what I think is in it. I don't pretend to give the exact figure. I don't claim that I can see through a log and tell just what it is. We scale to the best of our knowledge; what we think is right. When we scale full we come pretty close to it; give whatever it shows on the rule. I never scaled with another man, both scaling the same log at the same time. I have had a test of my scaling by having scale made over after me, full scale both ways, lots of times. I don't know how nearly correct I come when amounts scale full.

I am working in the woods now for the Pine Tree Lumber Company. Mr. Weyerhaeuser is connected with that company.

By saying I don't know how near correct I am when I scale full, I mean when I scaled full I would know I was correct, but I wouldn't give any more than what the rule gives the log. It would be the correct, full scale; but unless I scaled the same brail over straight and sound I would not be able to tell how much sound lumber, in my judgment, was in the same amount of logs.

Plaintiffs then offered in evidence the deposition of F. H. BOARDMAN, who testified that he was a scaler who had had considerable experience in scaling logs on the Chippewa river and its tributaries. The witness then testified that he scaled logs at West Newton in the summer of 1893; that he scaled some of the same logs at
74 West Newton that he had previously scaled upon the Chippewa river in the woods. He further testified that the scaling was done substantially in the same manner as had been testified by the witness Campbell.

He testified further that during the period of his employment as a scaler at West Newton booms in 1893 or at any time prior thereto he never called out to the tallyman any different number of feet as the amount he determined to be in any log than the amount he found out by the scale rule where he was scaling full or by the scale rule and making such deductions as his judgment called for where he scaled straight and sound, and that he never had any instructions or any intimations from any of his employers that he was in any instance to make anything other than a fair and honest scale according to his best judgment.

He was shown the original tally-sheets of brails No. 2222, 2304, and 2387, and testified that he remembered scaling logs of the marks that were put down on those sheets at West Newton in the year 1893; that he scaled those logs straight and sound; that the rule used was what was known as a modified Scribner rule; that it is the same rule that is in use in the States of Wisconsin and Minnesota as the Scribner rule; that the modification is this: where the figure 5 occurs, for instance, it is 55—the log scales 55 feet—we will assume we call the log 50 feet; if the log would scale 56 feet we would call it 60 feet. The 5 is always thrown off—that is, there is four numbers goes ahead and five numbers back. If it scales anything over five it goes to the next ten; anything less, the five included, goes back to the ten before.

Plaintiffs, to further sustain the issues upon its part, offered in evidence the deposition of ROY ACHENBACH, who testified:

I live in Alma, Wisconsin; am twenty-one years old. I am a barber by trade. I have worked at West Newton about five
75 years, tallying every year, during the entire season that the booms have been running.

What we call tallying is having a sheet and get onto a brail of logs. There are two men measure the logs, calling them by turn, and the tallyman answers the calls so that the scaler knows he has got them and puts them down on these sheets.

That sheet is called a tally-sheet. The scalers call the marks and

the amount of the logs, how many feet there is in the logs. The tallyman takes those by turn the way the scaler calls them to him and puts down the mark of the log and number of feet as they are called out. I was tallying here at West Newton booms in the summer of 1893; all summer during the times the booms were running. The scalers did not call out the full amount on the sheet; for instance, there is a log of 120 feet, we put down 12; the cipher is added in the office when they are footed. The figure representing the unit is always left off when it is put down on the sheet, and when the scalers call it off to the tallyman they call out the same figures as they put down.

Witness was then shown the original tally-sheets of brails Nos. 2222, 2304, and 2387, and testified:

All the figures excepting—those that have been footed up and put on at the bottom are not mine—they have been put on in the office. All these in here are mine, and the signature and the date. All mine except the footings. I put the marks on. The marks on the upper right-hand corner of each one of the tally-sheets mean the number of chains that are in the booms that go around the brails, and the culls are logs that were thrown out altogether; they are culled; a log that is full of punk and one thing and another. We get the culls, find out those numbers, as they are called out to us by the scalers, and simply put down the mark there to represent the fact that there is a cull whenever it is called out to us by
76 the scaler, and there is no further account kept of it in the scaling. In tallying these three brails of logs, the tally-sheets of which are shown me here, I put down correctly in each instance under the proper mark the number of feet that were called out to me, as they were called out to me by the scalers.

We got the numbers that were put on these tally-sheets for the brail numbers when we started in on the brail. There is an extra man hired for that, doing nothing else, going around numbering the brails. The number is placed on the boom, two floating logs—that is, two logs that are not chained. The boom is the string of logs that surrounds the brail.

When I had finished making these several tally-sheets, as far as I made them, I signed them at the time and dated them, and then sent them in to the office. I think I sent them by William Skrieffe, who was, I think, carrying sheets at that time. I don't remember. There was a man provided who makes that his business to carry sheets from the tallyman to the office.

The witness was then shown the original tally-sheet of brail No. 2272 and testified: That is all in my handwriting; the figures and signature, excepting those figures that have been put on in the office—the footings. That sheet was made by me in the same way that I have testified as to the other sheets, and after I had finished my work upon it I signed it and put the date upon it, and then delivered it to the man whose duty it was to carry it to the office. In making that sheet, I put down correctly the number of feet and the mark, as it was called out to me by the scalers whose names are put on the sheet there. In making these various tally-sheets, I have

never intentionally or so far as I know at all put down upon any sheet under any mark of logs any different number of feet
77 than were called out to me by the scalers except sometimes we got one down by mistake and the scalers corrected us, and, so far as I know, wherever any such mistake has been made, it has been corrected before the sheet has gone out of my hands.

The names of Boardman and Campbell, signed to brail No. 2222; Boardman, Ackley, and Campbell, signed to brail No. 2304 and 2387, and the names Sanford and Coleman, signed to brail No. 2272, are the names of the scalers. The signature is in my handwriting. Boardman, whose name is signed here, is Fred Boardman; Campbell, Stanley Campbell; Ackley, Lou Ackley; Sanford, Frank Sanford; Coleman, John Coleman.

On cross-examination the witness testified:

The last time I saw tally-sheet of brail No. 2272 was when I was up to St. Paul last February. I do not remember my figures in here, only because I see my signature. I can tell my figures without the signature. I signed these sheets that have been shown me, the date that has been given on the sheet there. I remember that because I see the date set down there. I don't just remember what kind of a day it was, whether warm or cold.

I know that at the time I tallied those sheets I was doing nothing else but tally those brails that year.

Thereupon plaintiff introduced the evidence of the scalers and tallymen who scaled and tallied the brails of logs mentioned in the complaint other than those mentioned in the testimony of the witnesses Stanley Campbell and Roy Achenbach, showing by such witness the scaling and tallying of all said brails substan-
78 tially in the same manner as testified to by said Campbell and Achenbach.

The plaintiff, to further sustain the issues upon its part, then offered in evidence a part of the deposition of J. B. PHELPS, who testified as follows:

My name is J. B. Phelps. I reside at Davenport, Iowa. I am fifty-seven years of age, and I am secretary and treasurer of the plaintiff company; have held that office five or six years. As secretary and treasurer I did generally anything that is to be done. I have done it all in the office work—that is, at times.

I have knowledge of all of the business of getting logs to manufacture. I did not always do it all, but most of the correspondence in regard to logs to be received.

The plaintiff owned and operated some mills at Davenport, and has during the time of its corporate existence. We got
79 almost all of our logs to manufacture from the Chippewa river and its tributaries both by cutting them and buying them on the bank.

The principal part of the logs we cut in 1893 came through the West Newton booms in that summer. The logs in the brails number as follows: 2222, 2228, 2272, 1030, 1637, 2304, 2407, 2387, and 2470, belonged to our company.

I am familiar with the value of that class of logs. The value of these logs in these brails on the Mississippi river at the time they were taken was not far from $13.00, delivered at our mill. They were worth about $1.10 less at West Newton.

The defendant then offered the following part of the cross-examination of this witness:

I don't think I ever personally saw the particular brails of logs to which Mr. Clapp has called my attention.

The value of logs depends on the character, quality, and size of the log to some extent.

The plaintiff, to further sustain the issues upon its part, called J. F. CHAPMAN, who testified:

I have resided at Minneiska, Minnesota, about seven years.

I resided there in 1893. I was employed by the plaintiff in that year looking after their interests which are at the boom—the West Newton boom. I went to the rafting works every morning and got the numbers of the brails that were rafted, and looked after the fitting up and saw when they were fitted up, and kept the company informed when they would come out and how the logs were coming out of the boom. I kept a record of the brail numbers as they came along. I remember some of their logs having been seized by the defendant Mullen during the summer of 1893. I can tell the
80 date when these logs were seized and give the brail numbers that were seized.

Witness then produced a memorandum, and, being cross-examined at this point with reference to the memorandum by defendant's counsel, testified as follows:

I made a memorandum at the time and have a book for that purpose. I have it here. I am not generally accustomed to have logs seized down there. This book was kept to keep a record of the numbers of the brails as they were rafted out and came out of the rafting works from year to year.

The witness further testified on direct examination:

These logs were seized on the 30th of June. I got that from finding men in charge of the logs at that time, sent there by Mr. John H. Mullen, as I understood it. The brails of the Lindsay Phelps Company seized were numbered 1030, 1637, 2222, 2304, 2387, 2228, 2272, 2407, and 2470.

I know something of the market value of those logs at that time. It was between $12 and $13 per thousand feet rafted.

Those logs were released on the 24th day of August, 1893. They were just above Minneiska at the time they were seized, in places where there were numbers, what we call coupling-up chances, or numbers for coupling up and fitting up the logs. I think these logs were on two numbers, 13 and 15. These numbers mean places or chances for coupling up the logs and making them ready for the boats, temporary harbors. All but two brails of those logs had been coupled up and fitted for the boats when they were taken, when I found these men in possession of them. These two brails

were Nos. 2407 and 2304. After these logs were coupled up
81 and made ready for the boats I had no particular duties in reference to them, only warning our people that the logs were made ready for the boats. I based that information upon actual inspection of the logs in every case.

The last brail was dropped in on the 29th—I believe the 29th of June. I believe that is the same day that Mr. Mullen took them. The others had been there since the 23rd.

On cross-examination the witness further testified:

At that time I was working for the Lindsay & Phelps Company or the La Crosse Association. By the La Crosse Association I mean the association of lumbermen that employed me.

These facts I have given are taken from my memorandum book and are memoranda that were made at the time. I don't have any independent recollection about those brail numbers or the date. I only know what I find set down in my book. I know that General Mullen took those logs on the 30th of June from finding the men there in charge of them. I went there perhaps five or six o'clock in the evening and found his men there then. It might have been later than that; some time in the evening. I had been there before, that morning, early.

He took possession of all the brails, the numbers of which I gave, on the 30th. I can show the memorandum for three brails. All brails I have a memorandum of he took on the 30th are Nos. 2222, 2228, and 2272. These are the only ones that my memorandum shows were taken possession of by Mr. Mullen on the 30th. I made that memorandum at the time. Those three brails were on No. 13. No. 13 is about 1,200 feet from No. 15.

By chances I mean a temporary harbor for coupling logs ready for the boats. There were about 40 chances in all. No. 1 was above, opposite West Newton. They run in numerical order
82 down the river from that point.

Chance No. 13 was about five and a half miles from West Newton.

The reason I have not any memorandum as to when the other brails were seized by General Mullen is that these particular logs were liable to get aground, and I made a note of that fact that they were liable to get aground, and, following that, when they were seized I noted that fact.

When I put down the numbers in my memorandum book the brails were still in the booms, and afterwards I set down against those numbers the dates. I did not keep these three brails separate from the other six brails. I made a separate note of them. I did not do that because the Cable Lumber Company owned some of the logs that were in the six brails.

The Cable Lumber Company was interested in the marks S. A. M. There are only four S. A. M. brails, I believe. I kept them separate because the Cable Lumber Company had an interest in that mark. I think there was one other mark which was upon the logs in these brails in which the Cable Lumber Company was interested, besides this mark S. A. M. I won't be positive.

The two brails that had not been coupled up were on No. 15. There were six brails on No. 15, Nos. 1030, 1637, 2304, 2387, 2407, and 2470.

They usually couple three large or five small brails together into a half raft. At that chance there were two large and two small brails coupled, and two large brails not coupled at all. That is the best of my recollection.

The brails that were coupled were Nos. 1030, 1637, 2387, and 2470. The last brail dropped down there was 2470. No. 2304 was
83 dropped in on the 27th. No. 2407 was dropped in on the 28th.

On redirect examination the witness further testified:

The Cable Lumber Company had some interest in logs that were marked S. A. M. It was a half interest. I know there had been a division of the logs made up at West Newton. The fact is they had been divided up as fast as they came out of the rafting works—that is, we would give Lindsay & Phelps Company two brails, and the Cable Lumber Company alternately during the season. They had been charged to Lindsay & Phelps Company and had been consigned to Lindsay & Phelps Company and placed in their own chances under this arrangement I have testified to.

I marked all the brails at the time they were seized in the same manner, making a mark following the letter A. I made no particular notes except with regard to these three brails that were liable to go aground.

These other brails were seized at the same time the three were seized that I made a note of.

The plaintiff, to further sustain the issues upon its part, called HUGH STEWART, who testified as follows:

That he was thirty years of age; that he had been employed at West Newton by the Mississippi River Logging Company since 1883, more or less, in the office; that the various tally-sheets which had been referred to by the other witnesses had been in his possession, and that he furnished them to counsel before the depositions of the witnesses were taken, and that he made a computation of the amount
84 in feet, and the number of logs as shown by those tally-sheets, each of them, and that the number of logs and the number of feet that are shown by the tally-sheets as they appear there, were:

Brail No. 2228, 1,007 logs, 132,120 feet; brail No. 2272, 1,071 logs, 133,650 feet; brail No. 2222, 1,064 logs, 134,160 feet; brail No. 2304, 1,046 logs, 138,230 feet; brail No. 2387, 1,020 logs, 141,380 feet; brail No. 2407, 1,004 logs, 143,270 feet; brail No. 2470, 990 logs, 144,270 feet; brail No. 1030, 596 logs, 70,650 feet; brail No. 1637, 658 logs, 68,220 feet.

Plaintiff, further to sustain the issues upon its part, offered in evidence the tally-sheets of brails Nos. 2228, 2272, 2222, 2304, 2387, 2407, 2470, 1030, and 1637.

A copy of the tally-sheet of brail No. 1030 is hereto attached and marked Exhibit A 2. All the other tally-sheets were similar in form

and differed only in the marks of the logs, numbers of logs and feet, and the names of the parties signed thereto, each of said tally-sheets being signed with the names testified to by the several witnesses, as above set forth.

The witness STEWART further testified:

I was employed in the office of the West Newton Boom Company in the summer of 1893. I had been employed in that office since the summer of 1883. I had charge of the log business and log books. I made the consignments and bills for brails and rafts. I mean by consignments a record of brails and brail numbers and the number of logs in each brail. When a consignment is made out I mail it to the different owners. In order for me to perform these duties it was necessary to become familiar with the
85 ownership of the different marks of logs.

I knew then and I know now who the owners were of all the heavy running marks of logs that were running through that boom and being rafted out in 1893.

I have seen the tally-sheets that were attached to the depositions in this case, and know the principal marks that are in those tally-sheets. Some of the marks in these tally-sheets had been in use before that year. I cannot say they were all used before. No one else who had logs coming through there other than the parties whom I treated as the owners of these logs ever made any claim to any of the logs of those marks.

Lindsay & Phelps Company was treated as the owners of these various marks of logs that are in these tally-sheets during the year 1893 and of the same marks that had been running prior to that time. The logs bearing those marks were delivered during that season after they had been sorted out and rafted to the Lindsay & Phelps Company.

On cross-examination the witness testified:

I made out the scale bills when those logs were delivered to Lindsay & Phelps Company. That is all I had to do with it. That is what I mean by delivery, and is all I know about any delivery. These scale bills were made out by me in the office of the company.

When I speak of the West Newton boom I mean the rafting works at West Newton. These were logs that were running into the slough of the Mississippi river on the Minnesota side, known as West Newton slough. The logs are run from there by steamboats, which did the towing on the river, and they towed them to points down the river from the rafting works.

On redirect examination the witness testified:

86 When logs were delivered the boat that took them gave a receipt for them. These receipts were turned in to me for me to turn in the numbers. I entered in the consignment book the figures he turned in to me. I know the different boats that were employed by the different parties. I know the boats that were owned or employed by the Lindsay and Phelps Company to tow their logs.

I didn't always see their receipts for brails that contained these marks of logs signed by these boats. I generally did.

On recross-examination the witness further testified:

I only know the owners of the various boats on the river from what somebody told me. None of the officers of the Lindsay & Phelps Company ever told me what boats they owned. I couldn't tell you who it was that told me what boats Lindsay & Phelps Company owned. I understood they owned some boats. At times they hired other people to do their towing.

I spent all my time in the office. Mr. Chapman, the agent of the Lindsay & Phelps Company, told me what boats they employed for towing. All I know is what he told me.

Thereupon the plaintiff rested its case, and the defendant- moved for judgment on the ground that there was no proof of ownership of the brails which the plaintiff replevined; which motion was denied by the court.

Whereupon the defendants admitted in open court that no request was ever made by the plaintiff or any one else that the surveyor general should scale any of the logs running through the boom at West Newton in the year 1893.

The defendant-, to sustain the issues upon *its* part, offered
87 in evidence the articles of incorporation of the Minnesota Boom Company, which were marked Exhibit No. 1 and a copy of which is hereto attached, marked Exhibit No. 1.

Whereupon the plaintiff objected to the reception of said paper on the ground that the same is immaterial.

But the court overruled the objection and received the paper in evidence; to which order and ruling the plaintiff then and there duly excepted.

Defendant- then offered in evidence the commission of the defendant John H. Mullen, as surveyor general of the fourth lumber district, in the State of Minnesota, dated April 12th, 1893, which was marked Defendants' Exhibit No. 2, a copy of which is hereto attached and marked Exhibit 2.

Whereupon the plaintiff objected to the reception of such paper in evidence on the ground that the same was immaterial and incompetent; but the court overruled the objection and received the paper in evidence; to which order and ruling the plaintiff then and there duly excepted.

The plaintiff then objected to any further evidence under the answer in this case upon the ground that said answer does not state any facts which constitute any defense to this action, and on the ground that the same is immaterial, irrelevant, and incompetent; but the court overruled the objection and permitted the defendant- to introduce further testimony; to which order and ruling the plaintiff then and there duly excepted.

The defendant- then offered in evidence a certified copy of the official oath and bond of the defendant John H. Mullen, dated April 17th, 1893, and recorded the same day.

The plaintiff objected to the reception of such paper in
88 evidence upon the ground that the same was immaterial and irrelevant; but the court overruled the objection and accepted the paper in evidence; to which order and ruling the plaintiff duly excepted.

The defendants then, to further sustain the issues upon their part, called JOHN H. MULLEN, one of the defendants, who testified as follows:

I am the same John H. Mullen who was appointed surveyor general of the fourth district of logs and lumber in this State by Knute Nelson in April, 1893. I then resided and still reside at Wabasha, in this State. I know where the booms of the Minnesota Boom Company were located in Wabasha county at that time. They were located right at what is known as the West Newton slough, a point six or eight miles below Wabasha, on the Mississippi river. West Newton slough is a branch or side stream of the river, perhaps two and a half or three miles in length and in the neighborhood of a quarter of a mile in width. The main river flowed on the east side of this slough. The slough bordered the Minnesota shore. There was very little land in width between the east side of the slough and the main river—more a bar than anything else.

There were one or two small islands lying in there, and at the upper end, the north end, there was an island. I don't know the width of it; some considerable width at the upper end and at the lower, where the pockets were located. It was more of a bar than anything else. The main channel came up very closely to the works, where the works were actually in operation. The upper end was used principally for the storage of logs, and then further down they came to the point where they were assorted and turned into the
different pockets. As they ran down through the pockets
89 they were brailed and sealed and fitted for running out of the pockets further down. That part of the boom was very close to the main channel. The boats came right up to it. It was navigable up to the lower end of it, and it ran out, striking the main channel below, so that it was navigable all about there for steamboats.

At the upper end of the slough or at the upper end of the West Newton slough the boom company had arranged what they called a shear boom, that stretched out across the main channel of the Mississippi river, and that boom sheared or turned everything that came down the river and everything that was floatable into this West Newton slough, everything except steamboats, and that boom was opened and closed to permit steamboats to pass through—similar to a drawbridge.

Every time a steamboat went up or down the river it was turned one side to let them pass, and then resumed its position again after that obstruction had passed. It was put there for that purpose; for the very purpose of turning all the logs and everything into West Newton slough. As a matter of fact, all the logs were turned in there. All the logs that came into the river went into the slough,

and steamers would have to go in if they had not opened it to let them pass through. The rest of the slough was used for storing and holding logs in mass as they came down the river intermingled.

That is the upper end, and then after getting down beyond the storage part they came to what is called the sorting works. Then the logs were permitted to run along down still further. They were sorted according to their marks and turned into the various pockets or channels made of timber or boom sticks. There were several of these pockets running parallel with the length of the slough.

90 They simply divide the lower end of the slough into six or eight or ten different channels; just the number there were pockets there. These pockets were guarded on each side by continuous timbers or boom sticks, as they are called; hewn timbers generally, where the man could walk along the sides of them; timbers perhaps 24, 30, or 36 inches in width, joined together, so that the man walked on each side. They were used for the purpose of holding the logs in place that were turned in between them. They were fastened with piles, piling, and groups of piling and fastened with chains and anchors and lines, and then bridges were across at places, where the logs ran under them and the men walked over to get across. They were all connected with the Minnesota shore; they were in the main, at least.

These pockets were a part of the boom system. The logs went down by the force of the current as they were released from above whenever the people in control of the boom see fit to let them down to brail them and assort them.

The method of assorting in a general way was this:

There were a number of men employed there called assorters; they were familiar with the different marks: perhaps 2,000 or 3,000 different marks. These men pointed or pushed the logs in one direction and then there were other men who followed along down, persuaded these logs into these different channels or pockets, guided them in there, and sent them down into these pockets. I can hardly give an intelligent description of it. They were assorted in accordance with the marks. Logs of a certain mark were put in one pocket and perhaps several marks into another pocket and they were divided in this way.

These storage grounds above held everything, and then

91 these pockets would branch off from them, so a division of the property could be made very easily and very readily by those who were competent to do so. Men who knew these marks divided them accordingly and separated them.

I have known of an instance where marks of logs other than those intended for a particular pocket went into another pocket, of my own knowledge. The ownership of the logs which were passed through these booms was distinguished by the marks entirely. I have no knowledge of the exact number of marks. I am speaking perhaps more from common report. My best knowledge is that there were about 3,000.

These marks were cut into the logs. What they call a bark mark is cut into the logs through the bark and into the body of the logs,

with an axe, I presume. They have then what they call a stamp mark—in some instances, at least. That is put on the end with a sort of stamp, which perhaps is driven into the end of the log. Sometimes there are two marks on a log, one of which we call a bark mark and the other a stamp—that is, on the end, the sawed end, of the log—and these marks are letters and numbers and characters of a great many different kinds.

After these logs were assorted out in the various pockets they began at the lower end of one of the pockets usually, and the logs were put into what they call or what are known as brails, lengthwise, and generally the width of the pocket, and were bound together with wire, ropes, and chains and boom logs, with the brails arranged perhaps, my recollection is, about 600 feet in length and about the width or substantially the width of the pocket, perhaps 25 or 30 feet; I am not sure about that. This brailing is done for
92 convenience in handling the logs. These brails are then dropped down out of the pockets and then coupled up, and several of them together make a raft. Two or more brails form a raft. After they get out of the boom they are joined.

During the season of 1893 the logs passed out of these booms more rapidly at times than at others. During the month of June they ran at times six or seven or eight millions per day. I think as high as nine millions go out. The entire season while I was at work there the logs passed through at a very rapid rate. It depended largely upon the condition of the water and, of course, the quantity of logs on hand to draw from. The logging season that year ran along about ninety days. Over 400,000,000 were put through in that length of time, I think.

After the logs are brailed up and put into rafts in the way I have indicated they are subsequently taken down the river in rafts.

I have no personal knowledge that these rafts are oftentimes sold in bulk.

After the logs are put into these brails and brailed up every individual log is fastened in the raft, but they were fastened within certain booms and intended to be kept in place. They were packed tightly together—drawn together by outside boom logs running the entire length and inside and across. The boom logs were connected one with the other by chains and pins, so as to make a continuous fastening of logs around the entire brail, and then they were fastened in crossways with wire, ropes, and coupling lines. These rafts are from time to time towed down the river by steam-
93 boats. That is the usual manner of getting them down, I think. Generally, I think the price for towing is fixed by the quantity of the logs in the raft.

As these logs come down they are caught by this shear boom, which extends out into the river. They are in the process of floating down the Mississippi river from points above.

My best recollection is that this West Newton slough has been used for boom purposes since 1887—that is, within my own knowledge since that time.

It is not possible for the surveyor general of that district personally to do all of the work of scaling and surveying these logs, as provided by statute. It would take from thirty to fifty men when the logs were running, in the usual course of business, rapidly, and perhaps above that. It became necessary for me, in order to do that work, to appoint a large force of deputies, and I did so appoint. There was no town or village at West Newton in 1893. The next town or village is Minneiska, on the Minnesota side, about six miles below, and Alma, on the Wisconsin side, perhaps about the same distance above or a little less. I have no personal knowledge what were the hours of operating the boom during the season. In a general way, it was continuously run long hours during the busy season; from morning until night and without any nonesense.

My deputies during the season averaged something over thirty; from twenty-eight, perhaps, to thirty-five or thirty-six scalers; and then one tallyman to each two scalers. That made up the scaling crew. In addition to that, the general deputy who had charge of the work overlooked it.

The men were fed and lodged there right adjoining the work, in buildings built by myself for that purpose, and taken care of during the entire time.

94 Q. You may state whether or not there was any opposition on the part of the boom company to their scaling logs that season.

Counsel for the plaintiff then disclaimed any claim that the defendant is not entitled to his fees for scaling whatever logs he did scale by reason of the fact that before he commenced to scale some logs had run through the boom; and admitted that the parties in charge of the booms objected to his scaling the entire mass of logs in the boom at all times, not only while they succeeded in preventing it, but afterwards. Thereupon counsel for the plaintiff objected to the question as immaterial and incompetent.

The objection was overruled, and the witness stated that the boom company opposed his scaling logs there that season; that at first the boom company refused to permit the surveyor general's men to land with a barge-load of lumber and supplies for building camps, and used some force in preventing such landing; that he, the witness, afterwards went back with a crew of men and a steamboat and a barge-load of lumber and supplies and served a restraining order upon one Scott, who was there in charge of matters at the works, and then the witness landed. There was some talk between him and Mr. Douglas, but after communing over the matter for a time he was permitted to land; after that, repeatedly, brails of logs were let out of the different pockets and set down the stream before the surveyor general's men had finished scaling them, carrying them down the stream four or five miles, so they would have to row back against the current, and lost perhaps half a day. There was no particular number of scalers assigned by me to each pocket. The scalers went wherever they were ordered by Mr. Daly, who had charge of my work; sometimes there would be very much more

work in one pocket than in another. Mr. Scott was the manager of things for the Minnesota Boom Company in the season of 1893 in the office. Mr. Douglas, I think, had charge of the actual work of brailing and handling. Mr. George Scott was the general manager at the boom that season. I had known him in the neighborhood of fifteen years. We scaled everything that ran out of the boom within forty-eight hours after we landed the barge-load of lumber and made shelter for the men. The first day or two we were there we didn't scale everything; we ran until the close of the season from about the 15th of May. I would not be positive about the time of beginning. I had possession of the logs in question in these cases at the time of the commencement of this action.

Q. Under what claim did you so take possession?

The plaintiff objected to the question as immaterial and incompetent; but the court overruled the objection and permitted the witness to answer the question; to which order and ruling the plaintiff then and there duly excepted.

A. Under the claim of a lien for scaling or surveying.

Q. Were you holding the logs under the lien for scaling or surveying?

95 The plaintiff objected to the question as immaterial and incompetent; but the court overruled the objection and permitted the witness to answer the question; to which order and ruling the plaintiff then and there duly excepted.

A. I was.

That is all the claim I had.

I had a man in my employ during that season by the name of Johnson. He was in the office with me. I don't believe I can say what his first name was. He is present in court. I am not sure of his name—that is, his initials.

I caused to be served on the boom company scale bills for the work done by me there that season. I did not serve them personally myself.

A bundle of papers was then marked Defendants' Exhibit 3.

Q. I show you these papers which have been marked Defendants' Exhibit 3, and ask you if those were the scale bills for the work done there in May and June, 1893, together with your notice of lien claimed.

The plaintiff objected to the form of the question, unless it expressly appears by the record that the question is asked simply for the purpose of identifying these papers.

Counsel for the defendant stated: That is the purpose, just to identify them.

If it is for that purpose, I do not object to it.

A. Those are the bills.

These were also the notices of liens claimed, which were served for these scaling bills.

The defendant then offered in evidence Exhibit 3.

Permission being granted by the court, the witness was
96 examined by counsel for the plaintiff in reference to these papers, and testified as follows:

I don't know whether these papers were all served at the same time; I can't answer that question. I stated in my answer that they are the papers that I had prepared and caused to be served. I did not serve them personally. I was within a skiff within fifteen feet of the door of the office when Mr. William Foreman went in with them. He came out without them. He had general charge of my work; he is one of my deputies and is here in court. The bill of May was not served at the same time as the bill of June.

Q. These two scale bills appear to be one for May and one for June. Were they all taken by Mr. Foreman when you were in the skiff as you speak of and served at the same time?

A. At two different times. The bill for May was served shortly after the end of May and the bill for June was served soon after the end of June; as soon as it could be made up in the course of the office work. Mr. Foreman can give the date.

My best recollection is that these other papers to which the two notices are attached were served after the other papers; they were served subsequently. I don't know that of my personal knowledge.

My recollection is that the numbers of these brails seized were seized and numbered and notice served immediately upon our way up from the place where they were seized. It says so. It says I have seized and taken actual possession. A description of the logs seized was served at the time of the seizure and at the time of the service of the bill.

These papers, marked Defendants' Exhibits 5 and 6, were not served at the same time as either one of the others.

97 Counsel for the plaintiff said: Exhibit 3 is the scale bill for June, having attached to it the notice that the defendant claims a lien on the logs and the bill for scaling.

Exhibit 4 is a similar document for May, with a notice of lien attached to that bill.

Exhibit 5 is a notice that the defendant has seized and taken into his possession fourteen brails of logs, which are numbered and are the brails in dispute in these three cases.

Exhibit 6 is a paper exactly like it, except that one of these papers says that he does it to enforce payment of certain fees that have accrued to him during the month of June for the amount of $9,153.10, and Exhibit 6 says it is for the month of May to the amount of $1,935.82.

The witness further said:

I think I was present or near by when Exhibits 5 and 6 were served. I am quite sure of it, but I did not serve any of these papers personally, and I don't know to whom they were given except as I have been told.

The plaintiff then objected to the introduction of these papers and

each of them, stating that as far as Exhibits 5 and 6 are concerned neither one of them is a paper which under any circumstances is authorized by law. They do not appear to be addressed to the plaintiffs in this case or to have ever been delivered to it, and they are entirely immaterial and incompetent in this case.

As far as Exhibits 3 and 4 are concerned, we make the same preliminary objection—that there is as yet no proof of service upon anybody. We also object for the further reason that these papers are not yet made competent in this case for any purpose.

The statute under which they claim requires the surveyor
98 general to make out these scale bills (which, as far as the month of June is concerned, complies substantially with the law), and then it requires him to immediately record such bill on the books of his office, and upon his being paid his fees for such services to deliver a bill to the owner or manager of the boom. I suppose it is claimed that this original bill was delivered to the owner or manager or agent of the boom company, but I am assuming, for the sake of the argument, that somebody who was the manager of the boom company got these scale bills. Now, it would appear from the status of things that this bill was delivered before the surveyor general got his fees, and he had no business to deliver it. It does not appear that these bills were recorded in his office before they were delivered, and therefore the defendant had no business to deliver them.

There are in these bills and each of them a large number of logs running through this boom. The law provides: "No logs shall be scaled by the surveyor general or his deputies unless the marks upon said logs are properly recorded in accordance with the provisions of this title."

There is no proof that any of these log marks were recorded in the office of the surveyor general, and for these reasons we object to these papers being received in evidence as immaterial, incompetent, and irrelevant.

The court addressed counsel for the defendant-:

Do you claim there has been proof of service?

COUNSEL FOR THE DEFENDANT-: There has been some proof of service, and that is merely preliminary proof of service, and full proof of service will be shown later.

The court then overruled the plaintiff's objections and received the papers, Defendants' Exhibits 3 and 4, in evidence; to
99 which ruling and order the plaintiff then and there duly excepted.

Defendants' Exhibit 4 purported to be a scale bill of logs scaled during the month of May, 1893, containing 70 sheets. A copy of the first sheet and of the last sheet and of the notice and bill attached thereto is hereto attached and marked Exhibit 4.

Defendants' Exhibit 3 was a similar scale bill for the month of June, 1893, containing 78 sheets. Copies of the first, 25th, 27th, 30th, 33rd, 36th, 40th, 43rd, 48th, 51st, 52nd, 60th, 68th, and last sheets of the scale bill proper and of the notice and bill attached thereto are hereto attached and marked Exhibit 3.

The remaining sheets of Exhibits 3 and 4, not copied, were in all respects similar in form and contents to the sheets copied; are different only in the marks of logs, the number of feet purporting to be contained in such marks, and the date of the alleged scaling.

Upon cross-examination the witness testified:

I reside at Wabash. My business is practicing law. I have been engaged in the practice of law steadily for about fifteen years. My business has not been exclusively that. I have been engaged in the public service. I was adjutant general of the State for four years. Aside from that I had no other business. In the main, except in the performance of my duties of that office, I have attended entirely to the practice of my profession until I was appointed surveyor general. I had no practical experience whatever in scaling logs and lumber up to the time of my appointment as surveyor general. I did not scale personally any of these logs mentioned in these two bills.

The boom that I have described in response to the questions put to me by counsel as the boom of the Minnesota Boom Company runs from the upper end of the island on the east side of the slough over to the shore on the other side or very near to that shore; at least so that no steamboat or other water craft, unless it were a skiff, could go up or down the river unless the boom was open. That is my understanding. My idea is that that kind of a structure was necessary to get the logs into the West Newton slough. This shear boom is not a line of piling; it is two or more timbers, square timbers, joined or bolted together so as to make one continuous line of timbers reaching from the shore or near the shore on one side clear across the channel, sufficient to turn everything that is floating down in. It is several hundred feet long, fastened or attached to piles, I think. I don't believe I can tell the exact manner in which it is fastened at the shore end. Of course, the upper end, the swinging end, that moves independently, and it is opened or closed with some sort of a jenny or windlass. A man is kept there for that purpose, I believe. I should say it is not the lower end instead of the upper end that swings. I have been there on steamboats several times; boat whistles for the boom to open, and they pass through it. I did not see it when it was in the processs of construction. I don't know who built it except as I have been told. That is equally true of everything else that I have testified to about the West Newton slough. I don't know who built it or anything about it, except as I have been told or as I have inferred.

After you get by the head of the island the eastern side of the slough is either the island or a sort of continuation of it, in the shape of a bar, down as far as the works go. I know there are booms all the way along the shore. I have been there on both sides; there is a boom a good deal of the way. The booms are all the way along there to keep the logs from running into the stream in high water; of course, not on the Minnesota side, where the bank is high enough to hold them, but there is a network of booms all the way along there. When you go down

toward the lower end of the slough, towards what I call the assorting works, I don't know how many booms there are extending from each side towards the centre of the slough. I don't know as to the number. I know there is a place where they sort the logs, what they call the assorting works. As the logs come down from the storage pockets above they are separated and segregated. There is such a place there; I don't know how many there are. I don't know just how the assorting is managed; I have seen a part of it. I have seen it in a general sort of way—men working punching logs one way or another and calling out the marks—but just what the method is along there I don't know. My knowledge of it is general and not at all specific. I never had anything to do with them, either personally or through my men, at all. I did no sorting and we did no sorting; the boom company did all the sorting, and we simply scaled what was put in the pockets while they were being brailed, and nothing else. I know that all these logs were fastened to the Minnesota shore. There is no line of piling to my knowledge on the east side of the channel of the river; it is all on the Minnesota shore. The anchorage that holds the assorting works and these rafting pockets is a line of piles extending up and through the centre of the slough, but it is also connected with the shore. The whole business is on the Minnesota shore.

When I say these things are all fastened to the Minnesota shore I mean that the slough is on the Minnesota side of the channel, and these works are all fastened in the slough; but the buildings and all the business is done from the shore of the Minnesota side; there is nothing done on the Wisconsin side at all. None of my men, as far as I know or have any information, ever scaled any of these logs until they had been assorted and run into these various pockets, and when they were assorted and put into the pockets the logs were straightened out and put lengthways up and down the river, and if any of them ran in crosswise they straightened them out, and they lay them substantially clear across in that manner.

102 These boom logs that I spoke of that confine the logs are in the pockets when the logs commence to run in. They were placed in there first, so that the boom extends clear around the pocket except at the upper end, and is opened at the upper end to let the logs run through it, and when they get the pocket filled, then a boom is put across the top. It is closed, and then the brail is ready and dropped out. When the logs are straightened out in these pockets and the boom rafted, as I say they are, they are not immediately fastened together with these cross-lines—that is, not until the brails are pretty near finished. It is during that time, after they have been straightened out, but before they are fastened together with cross-lines, that we did the scaling. The scaling was done at the time the brails were being made up. The scalers followed the rafting crew right along. That was the usual course of business at that time adopted, so as not to interfere in any way with the business of booming. It is not as practical to do the scaling after the cross-lines were put on and the logs dropped out, because they could not be turned so well

if they were close together. It would be more difficult to do it. They would have to be pried apart in order to roll them if they were tied together.

I never towed any logs from there. I never made any contract for towing them. In the main, all I know about it—how the price of towing is fixed—is what somebody has told me. I have seen bills and statements between the company and men who were engaged in towing and looked over and checked them up previously; perhaps eight or ten years ago.

It is a fact that in some instances the towing from West Newton was done by the raft; by the thousand in others. I don't know personally of any instances in 1893 when it was done by the thousand.

A man by the name of George Scott was general manager of the works there. I don't know whether he was an officer of the Minnesota Boom Company. Mr. Edward Douglas was foreman in charge of the crews on the works, so reported. He seemed to have
103 charge of the men. I don't know whether he was an officer of the Minnesota Boom Company. According to these scale bills, we seem to have commenced scaling logs there May 15th. That was the first scaling I did there.

Q. Did you have in your office at that time any record of log marks?

The defendant- objected to this question as incompetent and not proper cross-examination.

COUNSEL FOR PLAINTIFF: We propose to show that there was no record of log marks.

COUNSEL FOR DEFENDANT-: It seems to me that that is a part of their case-in-chief, and not proper cross-examination.

The COURT: My impression is it is immaterial anyway, whether there was or not.

The court thereupon sustained the objection; to which order and ruling plaintiff then and there duly excepted.

COUNSEL FOR THE PLAINTIFF: I understand the objection to be sustained on the ground that the testimony is immaterial, and not because it is not proper cross-examination.

The COURT: On the ground that it is immaterial.

The plaintiff then offered to show by this witness that neither on the 15th day of May, 1893, nor any time thereafter during the period covered by Exhibits 3 and 4 was there any mark of logs or log marks recorded in the office of this witness, in accordance with the provisions of the statute of Minnesota in relation to the recording of log marks.

The defendant- objected to such testimony as immaterial, incompetent, and irrelevant, and not proper cross-examination.

The court sustained the objection; to which order and ruling the plaintiff then and there duly excepted.

A. I was not there at the boom all the time after the 15th of May. My knowledge of that comes to me from reports made to me by my deputies; and except what I saw of the working while I was there, that is all I know about it.

I know in a general way where the south line of Wabasha county is. I have been taken to the point where the county line is. It is just down below Minneiska, but I don't know that there is anything by which I could describe it now. It has been pointed out to me. It is below Minneiska; not a great way below, but I should think from a quarter to three-quarters of a mile; not a great ways below Minneiska.

104 Upon redirect examination, the witness testified:

The upper part of the works, the bank, is used in place of a boom, along in the first part of the season. By the storage the bank is very high, fifteen or twenty feet above the level of the water, even in high water—that is, on the main land.

The defendant-, to further sustain the issues on their part, called WILLIAM FOREMAN, who testified that he resides in the town of Glasgow, Wabasha county, and has resided there for forty-two years; that he has been familiar with the location of the West Newton slough since the winter of 1856, and that he was familiar with its conditions and the use to which it was devoted in the year 1893.

The witness then described the slough and the booms therein, substantially as they were described by the witness Mullen.

He further sais in describing West Newton slough and its location: The logs were gathered in the storage boom by running in from the Mississippi river above the shear boom. The shear boom was running from the Wisconsin shore towards the head of this island; the island which is between West Newton slough and the Mississippi river. There were two islands. The upper island in its widest part was, I should judge, in low water, about thirty or forty rods wide in the widest part. The lower island was some wider than the upper one; I could not tell you exactly how wide it was. The main channel of the Mississippi river, with reference to these islands, was over towards the Wisconsin shore. I do not know how wide the main channel was; I could not tell. I could tell very near how wide the river was; I should judge it was between half and three-quarters of a mile between the island and the Wisconsin shore. I think it was a little wider opposite the lower island, and it was in the main river that the boats navigated during the season. There was a couple of Government dams ran from this island out into the river to make the water run into the channcel at the lower island where the river, I think, was the widest, to gather the water; these were wing dams; they did not extend clear across the river; they were on the island.

A map was produced and marked Defendants' Exhibit 7, a copy of which is hereto attached and marked Exhibit 7, which was conceded to be substantially accurate. The said map was then offered in evidence by the defendant-, and the plaintiff objected thereto upon the same grounds as its general objections to all of the evidence offered at the opening of the defendants' case; but the court overruled the objection; to which order and ruling plaintiff then and there duly excepted.

The witness further testified:

I have marked on that map, with lead pencil, one of the pockets, putting the name "pocket" to it.

That pocket marked "A" is the foot or lower end of the storage boom. This point just below "A" is really a part of the log channel. This boom up here runs over to the Minnesota shore. This part marked "channel race" is what I mean by the log channel. The
105 portion of the boom between the letters B and C on the map represents the first sorting place, where there are a large number of sorting gaps for the pockets adjacent thereto. The place between D and E represents the second sorting place on the way down the log channel, there being a large number of sorting gaps in that territory. The third sorting place is between the letters on the map F and G, there being quite a number of sorting gaps there, and there is another sorting place between H and I, but there is not much sorting done there. To each of these sorting gaps, as I have pointed out on the map, there are these pockets tributary.

The Minnesota shore is on the southwest side of these booms and the island on the northeast. The main channel of the Mississippi river is not shown here until you get down below the slough, out northwest of the island.

This sorting of logs as they came down from the storage boom was conducted as follows: There was a party of men put on the logs before they came into the gap at all, marking them with an axe. Then they were run down into the gap and a crew of men pulled them or run them into the pockets. They pulled them in with long pike poles. The logs were floating in the water and were rolled over from time to time to get at the various marks. Certain marks were run into certain pockets, as far as the men could do it. I saw them working it.

That process went on at these various sorting gaps all through the full length of the boom. As to whether or not the logs were sorted clean into these various pockets depended to a considerable extent upon the ability of the men to do it, I suppose. I am not enough acquainted with the marks to know.

The brailing process was as follows: As soon as they com-
106 menced in a pocket they would run the logs into it, or if the pocket was full they would commence to straighten them around. A crew of men on each side or two men would make a boom out of three links and two plugs, and a plug at the end of each log, and kept right on until the brail was finished, in this way making a boom for the outside of the brail; and at various distances they would run a wire line across, with a crotch driven in the log over it, and other logs would fill the brail. They were arranged in tiers across, and the brail when completed was held crossways by wire ropes to make it a little more stiffened, so it wouldn't spread out, to hold the brail tight together so it would be about the same width all the way up.

The surveyor general did that work upon the logs as they were being brailed up into these brails in the pockets. The logs then

were in condition so as to be rolled over readily in the water and the mark examined.

I first went down there to the boom to assist General Mullen in his work on the 2nd day of May, and I was with him as his deputy during the entire season from that on.

Q. You may state whether or not there were any obstructions put in your way by the boom company to the work that the surveyor general was doing or attempting to do there.

The plaintiff objected to said question as immaterial and incompetent; but the court overruled the objection; to which order and ruling plaintiff then and there duly excepted.

A. Yes, sir; there was.

Q. You may state what.

The plaintiff objected to said question as immaterial and incompetent; but the court overruled the objection; to which order and ruling plaintiff then and there duly excepted.

107 A. By their men getting on and being in the way when we started. We would have to wait until they got five courses ahead, and then if our men weren't through they would run them out and run them off down the river.

The plaintiff moved to strike out the answer of the witness as not responsive to the question and as immaterial and irrelevant; but the court denied the motion; to which ruling and order the plaintiff duly excepted.

That was not the first obstruction. The first obstruction was when I undertook to land my barge and they cut my lines loose—the barge with supplies to build the camp and lumber. Mr. Douglas ordered the lines cut.

Q. Who else was there at the time of the company's men?

A. I don't know that. Mr. Scott showed up later and said that he gave——

Q. What do you mean when you say Mr. Scott showed up?

A. In a day or two afterwards when we were down there—Mr. Mullen and myself—Mr. Scott was on the bank. He and I had some words about what happened the day before, and he said he gave Mr. Douglas orders to cut that line.

The plaintiff objected to any testimony as to what Mr. Scott said until it is shown that Mr. Scott is such a representative as would bind the principal.

COUNSEL FOR THE DEFENDANT: Do you deny that he was?

COUNSEL FOR THE PLAINTIFF: I do.

The COURT: Isn't there some evidence that he had charge there?

COUNSEL FOR THE PLAINTIFF: There is some evidence that he had charge there—of the boom.

The court then overruled the objection; to which ruling and order plaintiff duly excepted.

108 Counsel for the plaintiff then objected to any testimony at this time as to what was said until some further evidence of Mr. Scott's connection with either the plaintiff or the Minnesota Boom Company is given; but the court overruled the objection; to which order and ruling the plaintiff duly excepted.

A. Mr. Scott was on the bank, and he and I had some talk about what happened a couple of days before that. I said I thought Mr. Douglas acted very roughly with me in cutting the barge loose. He said, "I gave him orders to cut the barge loose."

The WITNESS: The first obstruction was when we undertook to land the barge; a brail of logs was dropped down against the barge. I undertook to make fast to the pile out in the river. A brail of logs came out, and I told a man with a skiff to get on to the brail and pull; they did so and made fast to the piling in the river. Mr. Douglas ran up on the steamber Hartford and ordered them to let that line go and they did so. I didn't know anything about it, and called out to them to know what was the manner when I saw the line let go. They came in, and I told them to go and make fast to the shore and not let go unless I told them to. They started with another line or the other end of that line on shore, and made fast to a tree in the water. I was snubbing the end of the line on the barge when Mr. Douglas with his steamboat ran down between me and the shore and got the line fast on the bow of his boat. I threw the line loose on the barge and let it drop in the water, so that he ran over it. I turned to pull it in again and heard him call to some man in a skiff to cut the line, and the line was cut square off. I called the men in with the skiff again and told them to take the other line and go ashore—we were then getting near the shore—and Mr. Douglas with his steamboat ran round on the lower side of me and said, "Get out of here." I told him this was stuff to build camps for Gen. Mullen and I would like him to tow me to where I wanted to go. I told him I wanted to go up there, and he said he would tow me down the river. I told him I didn't want to
109 go down the river; I said I wanted to go up the river. He said, "Get out of here." I said, "I have got some stuff that I am going to land to make camps for Gen. Mullen." He said, "If you will put a board on shore I will throw it into the river." He said, "Come down to the office." I started to the hind end of the barge, and when I got very near the hind end of the barge he picked up the line and picked up a pole and pushed the barge out in the river. They let it go adrift, and we had nothing to make a landing with.

Q. What was the condition of the water?

Objected to as immaterial and incompetent. Objection overruled. Plaintiff excepts.

A. It was very high; running over the banks on both sides; a very swift current.

Q. What was next done?

Objected to as immaterial and incompetent. Objection overruled. Plaintiff excepts.

Mr. CLAPP: It seems to me that is immaterial; we do not deny that we used all reasonable means to prevent them landing, believing they were wrong and were attempting to land on our own private property. We shall not claim that this defendant did not do his duty as far as scaling the logs was concerned.

Q. What was then done?

Objected to as immaterial and incompetent. Objection overruled. Plaintiff excepts.

The WITNESS: We drifted down the river a little way when some one ordered a steamboat to go and hitch on to us and take us off the premises. The steamer John Paul came along and coupled on to the barge and started down the river with us. I asked who was the captain of the boat and Mr. McKenzie said he was the foreman. I asked him where he was going with me; he said he was going to take us to Minneiska. I told him I didn't want to go to Minneiska; I wanted him to take me to where I could unload and build a camp. He said he had to obey orders. They took us down and
110 landed us as far down as Minneiska and tied a line to the shore, and then went off and left us there. This was between five and six miles below the point where we were cut loose, I should judge. Well, the General then applied to the courts and got an injunction on them from stopping or further interfering with us. We got a steamboat and started in. We landed at the office and Gen. Mullen went in and served the injunction on Mr. Scott and had some talk with him and called me to be present, and Mr. Scott says, "If the General is going to have a witness, Hughy, come out, I want a witness, too." He said, "Come out, I want a witness, too." So Gen. Mullen read the papers to Mr. Scott and then proceeded on up river—up the slough, rather—with a steamboat and barge. We landed, and Mr. Douglas met us on the landing and said, "Capt., I forbid you to land here." Gen. Mullen then read the papers to him and he went off. We unloaded the barge and built the camps. There was not any more obstruction then until we got the camps built. Mr. Daly with his crew of men was going out to go to work, and Mr. Douglas came down to where the men were standing and got into a skiff and told the men they had better look out for their pay; that they were not wanted there at all, and the company would not be responsible for or pay one cent. Mr. Daly made some remarks to him that he was not afraid of his pay or the men were not afraid of their pay, and then they got into the skiff and that is the last I saw of them until they went off and were carried down the river.

I do not know whether or not the original injunction that was issued was afterwards modified to some slight extent. I remember something about keeping five courses apart. I do not know just exactly what it was. The next obstruction was when the men were carried down the stream. They were run out as fast as they could

run them out. I mean by the words "run out" that they were carried out on the brail before it was finished scaling. The surveyor general's men scaled the brails at the same time the men that were scaling for the company scaled them. There was no particular distance that the two crews of scalers kept apart, something like
111 five or six courses, sometimes a little more—that is, our men kept behind the others. They were always behind and the company's scalers would go through first, and then the brails would be run out with our men on them.

Q. What was Mr. Scott doing there at these booms?

A. O, sometimes he was up with the Gracie Douglas looking around. I never was on the boat with him while he was around there. Sometimes he walked up the bank. He ran the office. I heard him give orders to the steamboat men. I know he was in charge of the works.

The witness was shown Defendants' Exhibit 4 and testified:

I had that paper in my possession some time in the fore part of June, 1893. I gave it to Mr. George Scott, to whom I have referred. At the time I gave it to him the stamp mark, "Received June 16, 1893; answered," was not on it. I do not know who put it on. All I know about it is, I handed it to Mr. Scott and asked what he was going to do with it. He says, "I don't know." I says, "I want to know. Are you going to pay it?" He says he couldn't pay it and hold his job. I says, "What are you going to do with it?" He says, "I will refer it to my superiors." He took it and kept it.

The witness was then shown Defendants' Exhibit 3 and testified that he had seen that before and had had it in his possession
112 and served it on Mr. Scott on the 7th day of July, 1893, at half past four o'clock in the afternoon. He took it and kept it.

The witness was then shown Defendants' Exhibits 5 and 6 and testified that he had those papers before and served them on Mr. Scott at the same time that he served the June bill—that is, the 7th day of July.

The defendant- then offered in evidence Defendants' Exhibits 5 and 6; but plaintiff objected to the same, and each of them, as immaterial, incompetent, and irrelevant; but the court overruled the objection; to which order and ruling plaintiff duly excepted.

Copies of said Exhibits 5 and 6 are hereto attached and marked Exhibits 5 and 6.

The witness further testified:

Mr. Scott took and kept these papers also. I was present at the time of the seizure of these brails. The seizure was made just a little above Minneiska, at the mouth of the White Water river. When I seized the logs I got my men on to watch and hold them, and we held them until they were taken in the replevin action which we are now trying. These logs were not fitted up for rafts at the time they were seized. I was there personally nearly every day and saw the situation and condition of the logs at the time of the seizure.

Q. Do you know when the logs were seized—under what claim they were seized by General Mullen?

The plaintiff objected to this question as incompetent and not the best evidence and calling for a conclusion of the witness; but the court overruled the objection; to which ruling and order plaintiff duly excepted.

A. Yes, sir.
Q. You may state what.

The plaintiff objected to this question as incompetent and
113 not the best evidence and calling for a conclusion of the witness; but the court overruled the objection; to which ruling and order plaintiff duly excepted.

A. To enforce the payment of the May and June fees for scaling—that is, the scaling which was done there, as set forth in this bill.

I had known this Mr. Scott ten years prior to that time. These papers were all served on the same George Scott.

On cross-examination the witness testified:

I heard Mr. Scott give some orders there to some steamboat men. That was not with reference to taking rafts after the logs had been sorted. One was with reference to taking the boat up and leaving it at the camp, so that he could go to Wabasha. The other was to take a boat and take him down to Chimney Rock—take Mr. Scott down to Chimney Rock. He wanted to get the numbers of some brails of logs down there.

I heard him give Mr. Stewart some orders in the office. One of these boats was the Gracie Douglas, and the other was the Jessie Bell. I do not know who owned these boats.

My business had been farming up to the time I was appointed deputy surveyor. I had never lumbered any, and never had any experience in handling logs in any way, and didn't scale a log, and didn't undertake to direct the men how to scale logs.

It is along in there above the point marked C on the map that the men got on the logs and marked them with axes; between C and A, and so on, but they scatter out very wide. These marks are what they call catch marks. They don't agree with the mark that is originally put on the log. I understand that one catch-mark
will be cut on the logs of a great many different marks where
114 these same logs belong to the same owner. I understand that catch-mark is really so as to have a fresh mark to catch the eye of the men sorting. I suppose it was on account of these men that were not acquainted with the marks, so they would know about these catch-marks. They put them in whatever gap they wanted at the time they were sorting these logs.

I suppose one catch-mark might represent, perhaps, one hundred different bark marks and at other times only four or five.

At each of these places where logs are sorted and pulled in on one side or the other of what I call a log race men are stationed to examine every log as it gets in there, and if they find a mistake is

made by pushing it in there they push it back into the channel. There were four or five of these places.

The men who do the brailing or rafting are separate crews from the men who do the sorting.

I gave Exhibit 4 to Mr. Scott some time along in the fore part of June. I can't get any nearer to the date than some time in the fore part of June, because I didn't make any note of it. I wouldn't swear it wasn't on the 16th of June. I was so careful to make a note of the other one because we tied up these logs by a lien on those logs at that time.

We seized the logs between the first and seventh of July; I couldn't tell you positively what day it was; I didn't make a note of the day when we seized the logs. I think it was some days before the 7th of July. It might be three days; it might be only one day; I don't remember exactly.

When I gave Exhibit 4 to Mr. Scott I asked him if he was going to pay the fees. He said he couldn't. After he had said he couldn't I told him I wanted to know what he was going to do with it. He said he was going to refer it to his superiors. I asked him if he was going to pay it, and he said, "No."

115 He said, "I couldn't pay it and hold my job." At that I left the bill with him.

I didn't have anything to do with making out either of these Exhibits 3 or 4.

I know that those logs were not fitted up for the boats, because I had to go up to Wabasha to get the lines to hold them together; and another thing, I went down there the next morning after the seizure.

There was a crew of men at work fitting them up, and I stopped them. There was two steamboats tied up to the raft at the same time, ready to take them out, I suppose.

I never saw Mr. Scott at West Newton prior to 1893.

Defendants, to further sustain the issues upon their part, called THOMAS IRVINE, who testified:

I knew about this company known as the Minnesota Boom Company. I was the secretary of that company in the year 1893.

The defendants then recalled JOHN H. MULLEN, who further testified as follows:

I know Mr. Thomas Irvine, who was just now on the stand. I saw him in 1893 during the season, while I was engaged in scaling these logs down at this boom. I had a conversation with him as to who was in charge there.

Q. You may state what he said as to who was in charge of the Minnesota Boom Company.

The plaintiff objected to this question as immaterial and incompetent; but the court overruled the objection; to which ruling and order plaintiff duly excepted.

A. He said Mr. Scott was—George Scott.

That is the same man with regard to whom I have hereto-
116 fore testified.

On cross-examination the witness testified:

I am not sure whether the conversation with Mr. Irvine was at the capitol or at the residence of Mr. Irvine in St. Paul. It was during the month of April, 1893; possibly it might have been early part of May, but it was about the beginning of the work there. The conversation was on the part of Mr. Irvine; it referred to Mr. Scott. Mr. Irvine remarked as to the efficiency of Mr. Scott and his ability to turn out work and getting over work, and spoke of him in a very kindly manner—of Mr. Scott—at that time; and in the course of that conversation he stated, in a general way, that he always used to feel that he himself, Mr. Irvine, could do a good deal of work in a given time or length of time, but that Mr. Scott could oversize him, or words to that effect. He spoke in a complimentary and kindly manner of Mr. Scott and his ability as a man at the works. It was a general conversation. Mr. Irvine did the talking and I listened. Then, in a general way, he referred to his own health; that he was not strong. I think he mentioned some disability, that his general health was not good, and that he depended upon Mr. Scott to do his work there in the main; that is the substance. I don't know that I could give the exact language used by Mr. Irvine at the time, but the substance of what he said was that Mr. Scott was doing his work there and that he depended upon him doing Mr. Irvine's work. I think Mr. Irvine will recollect that conversation. I am not sure that the name of the Minnesota Boom Company was mentioned in that conversation at all.

Q. Does it not occur to you and is it not your best recollection that what you were talking about was the boom down there, and the work in the office, and Mr. Scott's ability to handle that kind of work, and his efficiency, and the character of that sort of thing?

A. Well, it came up in connection with Mr. Irvine.

I think he related to me the incident of his coming on here first and wanting to take this work from the East or from his former residence in Canada, if I mistake not, and then his living at the slough—that was at Beef slough—and then of his removal to
117 St. Paul, and getting away from there. It was the general conversation. I had known Mr. Irvine for many years. It was a sort of friendly conversation at that time. A part of his conversation was with reference to Mr. Irvine's coming there to the slough, and that led up to what was said concerning the work at the slough or at the booms down there, and also Mr. Scott. The more I think of it now, I am inclined to think that this was at Mr. Irvine's residence. I received a note from him asking me where he could meet me, and before I had an opportunity to see him I received another note from him asking me to meet him at his house. I went to his house and, I think, Mr. Scott was there. Mr. Scott went out a short time after I came there and the conversation then drifted in that direction. I may be mistaken as to the place; it was along at an early day. I had met Mr. Irvine several times on the train between St. Paul and Wabasha and several times at the

capitol, so it is very difficult for me to tell the exact time. When I said he detailed his going there from the East to take charge of that I referred to Mr. Irvine.

The defendant-, to further sustain the issues upon their part, recalled WILLIAM FOREMAN, who testified:

I know Thomas Irvine, who was on the stand lately. I have known him since 1885. I was present at the conversation which occurred between him and General Mullen in 1893 in regard to the management of the boom down at West Newton; I heard the conversation; it was in the Windsor Hotel bar-room in St. Paul. I would not be positive that the name of the Minnesota Boom Company was mentioned, but the name "boom company" was mentioned.

Q. Was anything said about Mr. Scott?

A. There was.

Q. What was said?

The plaintiff objected to the question as immaterial and incompetent; but the court overruled the objection; to which ruling and order plaintiff duly excepted.

A. Mr. Irvine stated that in his absence Mr. Scott had full control there.

On cross-examination the witness testified:

Q. When was this?

A. It was between the 2nd and the 15th.

Q. Tell us all you remember of that conversation.

A. Well, the start of it was General Mullen was getting out some papers to serve on the boom company, and Mr. Irvine requested a meeting at the Windsor hotel, and Gen. Mullen and myself went up to his residence and he was not in.

He made an appointment with me to meet me at the
118 Windsor hotel and we started on this cutting loose of the barge. Mr. Irvine said he was very sorry that it happened, and if he had been there it would not have been so. General Mullen said that the men down there must have had some instructions or they would not have acted so violently. Mr. Irvine said they did not, but that they took the matter in their own hands. He said then, Mr. Scott—General Mullen made some remark about Mr. Scott—I don't remember exactly what it was, but that they must have given orders or they wouldn't have acted as they did.

Mr. Irvine then said, "In my absence Mr. Scott has full charge of the business there."

There was some more talk about his appointment of surveyor general and how he had interceded for him. He didn't want him to scale the company logs. He had no objection to his scaling outside logs, but company logs he must not and would not allow to be scaled.

Q. By company logs you understood what were commonly called pool logs?

A. He said company logs he would not allow to be scaled.

I understood boom company, as we were talking about boom company. I understood him to mean the boom company because we were talking about it. He didn't mention the boom or mention the company. I inferred it to be boom company logs from what he said. I didn't know anything about it. I inferred that Mr. Irvine was talking about boom company's logs in the same way I inferred that Mr. Scott was having charge for the boom company, because I was talking about the boom company. He mentioned that Mr. Scott had full charge of the business.

119 The defendant- then recalled JOHN H. MULLEN, who further testified that he hears Mr. Foreman testify with regard to a conversation at the Windsor hotel with Mr. Irvine, and that he remembered that conversation substantially as Mr. Foreman related it.

The plaintiff then, at the request of the defendant-, admitted that there has been no payment to the State of Minnesota on account of the claim of John H. Mullen for scaling these logs, and that the plaintiff in this case has not paid the defendant Mullen on account of this matter.

The defendant- then offered in evidence Defendants' Exhibit 8.

The plaintiff, by its counsel, objected to receiving said paper in evidence on the ground that it does not appear to be an assignment of the claim of the defendant Mullen referred to in his answer, and also because the paper is immaterial, incompetent, and irrelevant. Counsel for plaintiff waived the production of the original paper.

Which objection was overruled, and to which ruling the plaintiff then and there duly excepted, and said paper was received and is as follows:

"For value received I hereby sell, assigns, transfer, set over and deliver to the State of Minnesota, any and all right and claim of whatsoever name, nature and description for services performed and disbursements made and expenses incurred by me as surveyor general of logs and lumber of the fourth district of the State of Minnesota, and I hereby authorize and fully empower said State to collect the same in any manner which may be deemed best.

In witness whereof I have hereunto set my hand and seal this 12th day of February, A. D. 1895.

JOHN H. MULLEN. [SEAL.]

Signed, sealed, and delivered in presence of—
C. G. LAWRENCE.
RICHMOND R. WARNER."

The defendant- then offered in evidence Defendants' Exhibits 9 and 10 and the same were received without objection, and a copy thereof is hereto attached and marked Exhibits 9 and 10.

The defendants, to further sustain the issues upon their part, called JAMES KANE, who testified as follows:

120 My name is James Kane. I have resided in Wabasha, on this State, twelve years. I know where the West Newton slough is; was there in 1893; had been there prior to 1893; was working just above the West Newton slough in the year 1891, on the shear boom that turns the logs down into the West Newton slough. There was half of that boom stationary and the other half was so that they could swing it to let steamboats and rafts go down the river. I saw that shear boom in the year 1893. It appeared to be just the same in 1893 that it was in 1891, that I worked there. In 1891 the boom was used to catch logs and shear them into this West Newton slough. Logs were supposed to go in there; but sometimes when the raft or a steamboat came along, if the logs were running thickly, there would be a good many of them go by when the boom was open, or, if it was closed, a steamboat going down empty, without a raft, would fetch the logs down there; otherwise it caught the logs as they came down and sheared them into the West Newton slough or boom. There was no certain time it opened, except a raft or a steamboat came along.

Thereupon the defendants rested their case.

Thereupon the plaintiff moved the court for judgment against the defendant upon the ground that, from all of the evidence in the case as it now stands, the defendant has failed to show any interest in or lien upon or right to possess the property described in the complaint in the action now on trial.

Plaintiff's counsel stated: I think that all the points we rely upon have been indicated to the court in the former argument; but I do not think there is any competent evidence to show that the defendant the surveyor general has scaled any logs down at West Newton; no scale bills, original tally-sheets, or pass books or anything of that kind have been introduced. It is true he has introduced a paper which he says he turned over to Mr. George Scott in the months of June and July, 1893, but these papers are not evidence under the statute, except that the surveyor general has made a claim against the Minnesota Boom Company for scaling certain logs.

121 They purport to be scale bills, but they are not sufficient evidence to prove the defendant's case. There is no evidence that these scale bills were ever recorded, and there is no evidence that the surveyor general ever recorded these scale bills in his office; also the evidence shows that the agent of the boom company refused to pay the bills; also, under the lien section of the statute, the surveyor general could not have any lien and could not take possession of any property until after he had made out and delivered these scale bills and notice of claim of lien. As far as the June scale bill is concerned, it appears conclusively that it was not made out or delivered to any one until three or four days after the logs had been seized.

But the court overruled the motion; to which order and ruling plaintiff duly excepts.

The plaintiffs then called EDWARD DOUGLAS, who testified as follows:

That he resides at Winona, and has for six years prior to that time resided in Wisconsin, at Beef slough; that he is forty-nine years of age.

I am in the employ of the Mississippi River Logging Company, and have been in the employ of that company since 1871 continuously. I know where West Newton slough is upon the Mississippi river. I have known of that slough since 1877 or 1878.

I first did work in that slough in the way of logging or rafting or navigating the slough about the eighties; early in the eighties, I guess; more from 1884 to 1887. Prior to that time we had piling put in there. When I say we, I mean the Mississippi River Logging Company. Prior to 1884—in the seventies—before there was any obstruction put in the slough, steamboats tied up to rafts in
122 there and towed down logs. I have heard a description in a general way of the booms and rafting works that are now maintained in the slough. The first sorting works were put in there in 1889, in the spring.

We had put a boom in in 1888, a storage boom, but the structures that were put there for the purpose of sorting works were put there in 1889. I had the entire charge of that work. I employed the men and provided the pay and procured the material that was used, piling and rock and timbers. I did the work for the Mississippi River Logging Company. I did not do that work or any part of it for the Minnesota Boom Company. I was never employed a day in any capacity for the Minnesota Boom Company.

In the work of sorting the logs we have a sorter at each gap before the logs go into the pockets, to ascertain whether they have been properly catch-marked. For that purpose we select a person who has knowledge of the different marks—one of the best men. If a log is not catch-marked there is another man, and if he sees any log without the right mark he puts it back in the main race and puts the proper mark on it. If a log escapes not only the catch-markers but the sorters and this man whose business it is, and it gets into the wrong pocket, there is another man who goes with the scalers, and it is his business to take it out and put it where it belongs, and that is done.

A very large proportion of these logs that come through here are owned by one company, the Chippewa Logging Company. The Mississippi River Logging Company is also an owner of logs that came through there.

We have a pocket at the upper sorting works for each owner, as far as we can, and if they can't be gotten into that pocket,
123 then they go down into a pocket at some of the lower sorting places.

The logs that came into the booms of the Mississippi River Logging Company there in the summer of 1893 came from the Chippewa river. About two-thirds of these logs belonged to the Mississippi River Logging Company and the Chippewa Logging Company. There were several hundred different marks belonging to the Chip-

pewa Logging Company. I speak of the Chippewa Logging Company as including the logs of the Mississippi River logging running in the summer of 1893. All of these marks and all of the logs of those several hundred marks were put into one pocket, or one set of pockets, as they came through. No attempt was made to sort those marks; they went in altogether.

Q. How much difference in respect to time and how much difference in the extent of the work and the time to do the work would it have made if all of these marks had had to be sorted separately as other marks were?

A. I shouldn't think you could do it at all. We would not have room enough; we would not have room to do it.

Q. Would the delay that would have been occasioned have
124 been such as to prevent getting anywhere near the full amount of logs through in any one season?

The defendant- objected to the question as immaterial, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

Aside from the Chippewa Logging Company and the Mississippi River Logging Company, the highest number of marks belonging to any one owner which were running there in the summer of 1893 was probably twenty-five or thirty marks; some of them might have had more. There were not many owners that had as many as twenty-five or thirty marks. I should think not over ten or fifteen would be the average number of marks of the different owners.

I designated the different pockets into which the logs of all the owners should be delivered. I had that general oversight, and ascertained whether my instructions were carried out. I know they were. After the logs had been assorted and brailed my supervision ceased when the brails were fitted up for the steamboats. I had general oversight over the work until they were fitted up for the steamboats. Our men delivered the different rafts to the steamboats under my supervision.

The actual delivery of the logs to the steamboats representing the owners is done by men under my direction and supervision and I saw more or less of it done.

Q. Now, I will ask you this question: State, if you know, who, during all the time for the several days set opposite the two marks on Defendants' Exhibit 9, was treated and recognized by you and the men under you as the owner of these two marks and to whom the logs bearing these two marks were delivered.

The defendant- objected to the question as immaterial and
125 as calling for a conclusion of the witness.

The COURT: What would the testimony tend to show?

PLAINTIFF'S COUNSEL: The testimony tends to show that during all of these years these logs running through this boom were treated as belonging to the Lindsay & Phelps Company and to follow it up by showing that no one else has ever made any claim to them, and

then we shall offer to show that none of those logs with that mark ever got into that boom.

Mr. RICHARDSON: We object to it because it is not competent testimony to prove title, and, as far as ownership is concerned, the court has held that ownership has been proved.

The court then sustained the objection; to which order and ruling plaintiff duly excepted.

The witness then testified that in the winter he worked in the woods for the Mississippi River Logging Company, looking after the quality of the logs that were cut for the Mississippi River Logging Company and the Chippewa Logging Company, and that he visits the logging camps that are being conducted by other parties and sees the marks that are put on their logs.

Prior to 1893 I saw in the course of my travels on the Chippewa waters logs being put in there bearing some of the marks that are on Exhibit 9. The logs bearing the first two marks on that paper were being put in for Lindsay & Phelps Company. I don't remember having seen the third mark. The last mark was cut for the Chippewa Logging Company before 1893—five or six years before that—I don't know how many—several years before. It was after I saw these logs up there in the woods that I saw the marks coming through the boom.

Q. Has any one else other than the Lindsay & Phelps Co. ever made any claim there at the boom to any logs bearing either of the two first marks on this Exhibit 9?

126 The defendant objected to this question as immaterial and incompetent and no foundation laid. The court sustained the objection; to which order and ruling plaintiff duly excepted.

The witness further testified:

A good many winters I saw ninety to ninety-five per cent. of all the logs that are cut on the Chippewa river and its tributaries, and since then I have been employed as a sort of general supervisor.

During the winter of 1888 and 1889 and each succeeding season down to and including that of 1892 and 1893 I don't thin- I saw over fifty or sixty per cent. of all the logs that have been cut on the Chippewa river. During those winters my work was confined pretty much to the eastern tributaries. I think I saw very nearly all of the logs that were cut on the eastern tributaries.

In the summer of 1893 there were close to 500,000,000 feet of logs rafted out of the boom at West Newton. There was another place provided for storing these logs besides that part of the slough that was above the sorting and rafting works; that was at Minneiska. There was also a place on the Wisconsin side provided for storage, in Beef slough, and on the Mississippi on the Wisconsin shore, and there was provision made for taking, from time to time, these logs across the river into the West Newton slough. It would not be practical to run a boat through the slough at the present time.

There were two dams built by the United States Government, one at or near the head of the island, which forms the eastern boundary

of the slough, and the other at the lower end; that is what I call a wing dam.

There are others in the Mississippi in the channel outside of
127 the island. There was another dam at the head of the slough, further up, in 1893. I should think it was put in about 1883—1882 or 1883. Below the head of the slough the Government had done some riprapping on the shore, just at the end of the rafting works; that was put in since 1889. I don't think I was there when it was put in.

I know Mr. George Scott. He did not have or exercise any authority over me in 1893 in the performance of my duties.

I understand in some instances brails of logs were run out of the pockets where they had been made up before the scalers that had been employed by Mr. Mullen finished scaling the brail. There was no change in the method of doing the work there, that is necessary in the brailing, after General Mullen or his men commenced to scale, from what had been done before.

Q. Were there any brails of logs taken out of any other pockets and dropped down the river until it was necessary to do so in order to carry on the business there?

The defendant objected to the question as calling for a conclusion of the witness. The court sustained the objection; to which ruling and order plaintiff duly excepted.

It is twelve miles from the upper end of West Newton slough to the mouth of the Chippewa river. The Chippewa comes in just at the lower end of Lake Pepin. There is no perceptible current through Lake Pepin. I think they call it about twenty-five or thirty miles long, and it is on the average, perhaps, three miles wide.

On cross-examination the witness testified:

I have been through Lake Pepin on steamboats. I did not go through there on a steamboat at the opening of navigation this last spring. Speaking generally, there is no perceptible current through Lake Pepin. I have never seen any current there. I know there is a current there, because water goes down the stream, and there must be a certain amount of current there.

Lake Pepin is the Mississippi river widened out. The main channel of the Mississippi river runs through Lake Pepin.

128 During the season of 1893 when the lower tier of pockets was used for scrab-les I could not swear which one it was. By scrabbles I mean small lots of logs or logs where no owners claim them. I do not mean that the logs of indiscriminate owners are mixed up together and get into this pocket; it is small lots of logs where a party has a lot of logs, but not enough to make a pocket full; and also logs are put in there whose ownership we don't know. We didn't have any Mississippi River Logging Company pick-ups at West Newton slough in 1893. They went further down the Mississippi river. I did not turn them down the river at all. I can't say at what points we got the Mississippi River pick-ups that season; perhaps at La Crosse somewhere, and some below.

They were logs that would go by our booms. Some seasons more logs go by and some seasons less; some seasons quite a few.

We had no West Newton pick-ups, because logs that come down the Mississippi river, as far as possible, are taken in by our shear booms into the West Newton booms. Prize logs were put in the scrabble pocket in the season of 1893.

By prize logs I mean logs that have no mark.

I don't know why logs are called scrabbles any more than it is a name for them. I don't know how they came to be called that name. A stray log—we call stray logs, logs that stray out of their proper place. I don't know that we had any that run into the West Newton booms in the season of 1893. I think we put them in the second pocket below, not in with the scrabbles. Each mark had a duplicate pocket. If it goes by this pocket, we would put it in below here. Occasionally a log would get out of place. It frequently happened that logs of one particular owner got into a pocket which had been assigned to the logs of some other owner. When
129 that was done and the logs of an odd owner have got into the pocket of some other owner and were brailed up, they were not kept in the brail in that pocket in which they went; they were taken out. As far as my knowledge goes, they were always taken out. There might have been some logs that were not. I know of cases where they were not.

The scrabble logs after they were brailed in the season of 1893 were put in half rafts or rafts and kept and turned out in proportion to the owner. They were not divided up between the members of the Chippewa River Logging Company and the Mississippi River Logging Company. The Mississippi River Logging Company had nothing to do with them any more than that they bought them. They were not divided up between the members of the Chippewa Logging Company; they were divided up between the members who owned the marks that went in there—the different owners. They were never taken down the river and sold to the highest bidder; they were sold right below the boom there.

Every owner that had logs in there was given a proportionate share in these logs, according to his marks, if they knew his marks; every owner had his mark. I think the marks were all claimed; as far as I know, they were.

It often happens each spring that some people don't give their marks and the logs go into the scrabble pocket until we find the owner. I did not take charge of the division of these scrabble logs. The scaler made the division. The division was not always made at the close of each season. I can't say how often. No log division was made at any time until the close of the season. I didn't say that there were several divisions made during the season. When a party gets a brail he is entitled to 100,000 feet. For instance, if a brail is 100,000 feet, all right; if not, he is entitled to a brail
130 of 100,000 feet whether they are marked or not.

The dams I spoke of—one was at the head of the West Newton slough and one further up the river; just above. They were what I call wing dams; they reach out into the stream, but do

not reach clear across West Newton slough. We got our logs into the slough over the top of the dam. I suppose a dam was put in there to aid navigation. The Government put it in.

This map does not reach up far enough to show the Government dams. It does not show the head of the slough. The Government dams, I should say, are about four or five miles above the place denoted on the map by the letter "C." It was not put at the head of the storage boom. We have a row of piling running from the head of this island where the dam is probably three-quarters of a mile—probably half way up. It would be in a part of the Mississippi river, but a portion of it runs into the slough.

The witness then marked with the letter "M" a pocket, and testified:

I think that is the pocket we used for scrabbles in the year 1893. It was that one or the adjoining one. I don't know how certain logs came to be called prize logs; I can't say it was because whoever got hold of them took them as a prize, and that that particular name was adopted.

Mr. Weyerhaeuser was president of the Mississippi River Logging Company, and Mr. Irvine was secretary of the Mississippi River Logging Company.

When I was down at West Newton I took my orders from Mr. Irvine and from Mr. Weyerhaeuser—that is, Mr. Thomas Irvine.

I was there under Mr. Scott's orders at West Newton, as far as the office was concerned. Mr. Scott ran the office. If there were any orders coming from the office I did not get them from him about my work. If there were any orders coming from the office I got them from him, from the company to the office. They came through him, and I would get them that way. Sometimes
131 I got them direct and sometimes from Mr. Weyerhaeuser and Mr. Irvine through the office. I never got any orders from Mr. Scott directly. Mr. Scott never gave me any orders of his own accord.

On redirect examination the witness further testified:

I have every year had experience with the logs under my control getting up into Lake Pepin from the Chippewa river. Logs come out of the Chippewa river and go up into Lake Pepin with a south wind; if the Chippewa river is high and the Mississippi river is low they always go up there. Sometimes we take them out with a boat; sometimes we get men to keep them off the shore and let the wind blow them down again. I think all logs would stay by there all the time if they were not kept off the shore and brought down with favorable winds, or unless you had towboats.

132 Pick-ups are logs that get by the boom and go down the Mississippi river. We go after them with boats. There are years we pick them up as far down as Lansing; in 1893, I think, as far as La Crosse, at different places. The first place we pick them up is at Belvedere slough, just across from Minneiska, and a little above. The next place we pick them up is right along the Mississippi river, on both sides. We have a boom below Minneiska a short distance, on the Minnesota side.

We have another shear boom in there substantially like the one above, and shear them in there and raft them out.

From Lake Pepin to the shear boom where we turn logs into West Newton slough is nine or ten miles. From there to this boom at Minneiska it is very near the same distance—eight or nine miles. It is fifty miles from Minneiska to La Crosse by river.

All the rafting that is done on the logs, aside from putting the two brails together, is done in the pockets before they leave the pockets. Brailing and rafting have the same meaning.

Prior to 1889 the work of sorting and rafting the logs that came down the Chippewa river had been done at Beef slough, Wisconsin. Beef slough is one of the outlets of the Chippewa river into the Mississippi river, or was at that time. The lower end of that outlet is just below the shear boom that turns the logs into the West Newton boom. The main outlet of the Chippewa river into Beef slough is about fifteen miles above the main mouth of the Chippewa.

We left Beef slough and went to the Minnesota side of the river to do this sorting and rafting of those logs because Beef slough got filled up so we could not take logs through. It was necessary
133 to have some other place. We took over to West Newton all of the booms and fixtures that we had used at Beef slough and entirely abandoned Beef slough for that purpose.

During all of the time since we commenced business there, in 1889, the course of business has been that the owners took the logs away every day during the rafting season as soon as they are brailed up and dropped out of the fitting-up places. This is done because it is necessary for us to have room or close down our works. There is no room or place where logs can be held except temporarily almost in the channel of the river.

When I say Mr. Scott never gave me any orders of his own accord I mean that I had entire charge of the log work and of the outside work—outside of the office—and if I got any orders from Mr. Scott they did not originate with him, but they were repeated by him as coming from either Mr. Weyerhaeuser or Mr. Irvine. I don't think I ever got any orders from Mr. Scott in that way; I don't remember.

A paper was here shown, which was marked Plaintiff's Exhibit A, and the witness testified: This Exhibit A substantially represents the situation at the upper end of West Newton slough, where the logs are sheared in. The point marked A on the map is the point where the shear boom is attached to the Wisconsin shore. From there, extending diagonally down the river almost in a southerly direction, is a line of piling extending some eight or nine hundred feet to the point marked "*b*." From that point there are no pilings, but there is a continuation of timber forming the solid boom, extending down about 1,600 or 1,800 feet.

That part of the boom when it is in position to turn the logs into the slough is indicated by heavy lines drawn from
134 B to C, and when we wanted to let a steamboat or a raft through by some contrivance we caused it to swing until it reaches the position shown by the dotted lines B and D, and after the steam-

boat has gone through it swings back to C. This sand bar is a place where you can walk in low water from the boom on to the Minnesota shore, and this upper dotted line below the sand bar is the Government dam I spoke of, and this lower dotted line is the lower Government dam. Then, at a point a little way below the lower end of this swinging boom, there is an island or a series of islands, and that extends from the upper end of the island which forms the eastern boundary of the West Newton slough to this chain of islands. There is another line of piling that prevents logs from going into the river again after they get below the upper island. This lower line of piling is marked E. The point marked F is about at the mouth of Beef slough.

The paper referred to by the witness was then offered and received in evidence and a copy thereof is hereto annexed.

The boom on the Minnesota shore below Minneiska, where we turn in the logs we call pick-ups, is about a mile below the railroad station at Minneiska. It is in Wabasha county.

The plaintiff then called D. L. McKAY, who testified that he is fifty-one years of age and resides at Chippewa Falls, and is a lumber inspector of the sixth district, in Wisconsin, and has been for nine years; that during the years from 1880 to 1887 he inspected logs for Lindsay & Phelps Company cut on the Chippewa river and its tributaries.

That since 1886 or 1887 he has done the same kind of work on the Chippewa river for Chris. Mueller & Sons; that Chris. Mueller & Sons reside at Davenport, Iowa, and their business is manufacturing lumber. They are lumbermen and loggers.

Q. What marks had been placed upon those logs up to 1889? I don't care about anything after that.

135 The defendant- objected to the question as immaterial.

The COURT: How is that material in this case?

PLAINTIFF'S COUNSEL: We think it is material to show that the logs that came into the West Newton boom came from the Chippewa river, and we propose to show that these marks came from there.

The court then sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiffs then called LEVI P. SMITH, who testified as follows:

I live at Chippewa Falls, Wisconsin, and have for twenty-three years; am fifty years of age. For the last fourteen years I have been employed by the Chippewa Logging Company, superintending portions of their logging business—the scaling.

I was so employed during the years 1888 to 1893, inclusive.

I performed my duties on the Chippewa river and the tributaries and Beef slough and West Newton. My duties on the Chippewa river for a few years were inspecting scaling; then I was inspecting and looking after the quality and grading and marks, etc.

During the years 1888 to 1893, inclusive, I think I was looking

after the grading; I would not be positive as to the first year, 1888; looking after the grade and marks, etc.

I was doing that for eight or nine years previous to the present time. My work extended over half or three-quarters of the Chippewa waters during that time. I worked in the territory generally that was not covered by Mr. Douglas. We both worked sometimes in the same territory. I looked after the quality of the logs and their grade and how they were cut.

136 I could not say how many camps I visited; fifty or seventy-five; perhaps more; over fifty at least. They were scattered over quite a large territory—over several different streams.

Travelling from one camp to another and making the circuit, I presume I would travel three hundred miles in the course of my travels. I saw practically all of the other logs were being put in by other parties in the same streams. I noticed the log marks that were being put on these other logs. I was familiar with most of the marks that were being put upon those logs, the Chippewa Logging Company logs.

I would learn it during the course of my inspection from seeing it or inquiring whose log it was or something to that effect. I am usually advised in the spring for scaling purposes, before the logs commence to be sorted down at West Newton.

During the time that the sorting and rafting of logs was going on my duties were looking after the scaling and getting it done; the scaling of the logs running through, the logs running through there—that is, in 1893—also those that didn't run through, or that were picked up, or that the company picked up. I employed myself all of the men who were engaged in doing that business, both scalers and tallymen. They were supposed to be, and were, practical scalers; mostly men of large experience. They were all of them men who had been employed during the winter months in scaling the same class of logs on the Chippewa river. In addition to employing these men I had the general oversight of them. I was there practically every day during the time the scaling was going on. I might have been away for a day or two once in a while. From time to time I saw the different marks of logs that were coming through the boom; I think all of them.

137 Previous to 1889 this work of assorting and rafting the logs that came down the Chippewa was carried on over at Beef slough. I was employed in the same capacity over there.

After a quantity of logs had been cut and put into the Chippewa river or its tributaries up in the pine country there is a liability that some of them would come through the sorting works for, perhaps, fifteen or twenty years. The bulk of them would probably come in within five or six years; after that they would scatter along, a few logs or a log or two.

In the year 1893 the logs which came through the West Newton boom and were scaled there under my supervision bore the same marks as the logs I had seen in the performance of my duty as inspector during the previous years, as far back as 1889.

The scaling is done by the marks. We scale each log by the mark that is on the log, and the scalers put down the mark that is on the log and enter it. I used to rescale some brails of logs, and counted a great many to ascertain whether the scalers were in fact doing their duty. I kept a general eye out on them and looked after them.

I was present in court when the deposition of Mr. Stanley Campbell was taken and heard what he testified to with reference to the method pursued by him while scaling logs there. That was the method pursued by all of our scalers there generally. I never gave any of the scalers or talleymen there any instructions, either directly or indirectly, to scale or tally any logs in any manner different, whether as to the contents or the marks upon them, from what he actually found on them lying in the water. The logs that came through the West Newton boom in 1893 came from the Chippewa river and its tributaries in the State of Wisconsin. All of the logs
138 that are cut and put on the banks of the Chippewa river and its tributaries for the Chippewa Logging Company do not come down to West Newton; some of them are stopped at Chippewa Falls and Eau Claire. Different members of the company take them there.

The members were the Empire Lumber Company, the Valley Lumber Company, the Dalles Lumber Company, and the Northwestern Lumber Company. These companies are companies which have saw-mills and manufacturing plants along the river at Chippewa Falls and Eau Claire. Also the Chippewa Lumber & Boom Company takes them at Chippewa Falls. They also have a manufacturing plant at Chippewa Falls.

Q. You may state how, if you know, these logs are scaled that are taken in by these companies that you have named at Chippewa Falls and Eau Claire.

The defendant objected to the question as immaterial.

PLAINTIFF'S COUNSEL: The object of the testimony is to show that all of the logs of the Chippewa Logging Company everywhere after they leave the bank are scaled for the purpose of enabling the company to make a fair and equitable division among themselves of their property. The property, as will appear by the witness' testimony later on, is acquired by the Chippewa Logging Company from the various members of the corporation in proportion to the amount of money that is contributed to acquire the property. Then, as the logs come down the river the proportion of the Chippewa people is taken out, and the balance of the logs goes on down the river. This is done—and in order to make a fair and equitable division of their logs, the logs are scaled full.

The court then sustained the objection; to which ruling and order the plaintiff duly excepted.

The plaintiff then offered to show by this witness that all of the logs of the Chippewa Logging Company and of the Mississippi River Logging Company which came down the Chip-
139 pewa river, whether they are taken at Chippewa Falls or Eau

Claire by members of the Chippewa Logging Company or whether they are assorted and divided among the members at West Newton, are scaled full—that is, without making any deduction whatever for rot, crook, or other defects that may appear to be in the logs.

The defendant- objected to such testimony as immaterial.

The court sustained the objection; to which ruling and order plaintiff duly excepted.

PLAINTIFF'S COUNSEL: I propose to follow this up by the testimony of other witnesses and by the testimony of this witness, showing that the scaling is done in this manner for the purpose of making an equitable division among the members of the Chippewa Logging Company and the Mississippi River Logging Company.

The defendant- objected to the offer as immaterial, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

I know what are known as pick-up logs and scrabble logs. They are also scaled under my supervision. I also know what are known as prize logs—that is, logs that have no designating mark upon them at all that we can find. When they are scaled they are marked and put down as prize. All logs that have no mark upon them are scaled, if they are not culls. They are not scaled at all if they are culls. Scrabble logs and pick-up logs are all scaled straight and sound and otherwise scaled to the mark the same as all other logs.

In reference to pick-up logs there may be some exceptions—that is, where there are a lot of logs that break loose, that belong to steamboats, they were scaled full. They were sorted—we don't call them pick-ups, although one might call them pick-ups—that is, those that might get into the sorting works and be sorted there.

On cross-examination the witness testified:

As far as I know, every log that went into the West Newton booms there in 1893 was from the Chippewa river—cut on the Chippewa river. I mean by that that I have no immediate knowledge that any particular log was cut anywhere else than on the Chippewa river. I was not present when all of these logs were cut on the Chippewa river. I know from seeing some marks on logs there. That's all I know. I don't pretend to carry in my head every mark that run through West Newton boom in 1893. The majority of them I did at that time.

I have been acquainted with the Mississippi river for a number of years. I know that the business of bringing logs down the Mississippi river has been conducted for a long number of years past. I know that logs came down the Mississippi river and came down the Mississippi in 1893 from Stillwater, in this State. I saw rafts going by that I supposed came from Stillwater. I suppose in the course of my experience I have learned that logs are brought down the Mississippi river from points above—logs which come from Minnesota. I know where Reed's landing is. It is at the foot of Lake Pepin—that is, below the mouth of the Chippewa. I should think half a mile or a mile below Lake Pepin. There is a

railroad bridge there at the landing that crosses the Mississippi river there. I do not know personally of rafts of logs coming down through Lake Pepin to this railroad bridge and being broken up on this bridge. I can't say that I have heard of it. I suppose if a raft coming down from above should break up at that rail-
141 road bridge, they could pick them up. If they didn't pick them up and turned them loose and drove them down, I presume they would come into the West Newton booms. They would come without driving if they were not lodged in the piles or on the banks. They could float. I don't know that logs didn't go into that boom. I can't say that they did or didn't. I can't say where they came from.

The plaintiffs also offered in evidence in rebuttal the deposition of ARTEMUS LAMB, which was taken in the case of C. Lamb and Sons against the defendant, John H. Mullen, under a stipulation in that case, as well as in the case of Lindsay & Phelps Company *vs.* John H. Mullen, which, among other things, provided "that the evidence of any witness taken by either of the parties to either of said actions pursuant to said stipulation might be read in evidence in either of the other actions in which such deposition might not be taken in the same manner and subject only to the same objections which might have been made if such deposition had been taken in each action, it being the purpose of this clause in said stipulation to avoid multiplying depositions or evidence of the same witness."

This witness testified as follows:

I am fifty-seven years of age and reside at Clinton, Iowa, and have resided there for forty years. I am secretary and treasurer of C. Lamb & Sons and have held that office twenty years—ever since they were organized. I am also vice president of the Mississippi River Logging Company and have held that office twenty years.
C. Lamb and Sons are stockholders in what is known as the
142 Chippewa Logging Company. I do not hold any office in that company. The principal business of C. Lamb & Sons is saw-milling—that is, taking logs and manufacturing them into lumber; also running steamboats and bringing logs from the Chippewa and its tributaries to their mills.

They own and operate four mills at Clinton, Iowa. In and prior to the year 1893 they got their logs to manufacture from the Chippewa river mostly.

C. Lamb & Sons, as a distinct corporation, carried on a distinct logging business on Chippewa river during the year 1893 and prior to that time. We owned some pine land up there and contracted the logs floating.

Our company, as a distinct and individual corporation, sold their logs to the Chippewa Logging Company, which is commonly known as the pool.

Q. I wish you would state the method of doing business by the Chippewa Logging Company from the time that the logs were cut in the woods until they were sorted out of the booms, or wherever

they were sorted, and how the division is made between the various members of that company of the logs which belong to that company.

The defendant- objected to the question as immaterial and incompetent, as being a question which the court has already ruled out, and also because this matter is carried out by the books of the company, to which the defendant has no access.

The court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiffs then offered to show by this witness in his deposition that the logs are cut from timber owned by the Chippewa Logging Company by their own men and teams or by jobbers and delivered in the waters of the Chippewa, and that they were
143 driven by what is termed a driving company down to Eau Claire, on the Chippewa; that when they got to Chippewa Falls and Eau Claire certain members of the Chippewa Logging Company are entitled to a certain percentage of the logs cut or bought the previous year. It is the custom to take into the boom a certain number of hours or days, and then they are passed down the river for a certain number of hours or days, which is determined by the per cent. that belongs down the river and by the per cent. that belongs at Eau Claire. Then there are scalers appointed by the Chippewa Logging Company for each mill which belongs to the pool. This has reference to the Chippewa Falls and Eau Claire members. They are at the foot of the slip and scale all logs as they come. These logs, then, that belong to the Mississippi River Logging Company are brought on to West Newton, Minnesota, and there they are boomed and rafted by the Mississippi River Logging Company and are scaled by scalers appointed by the company by the same methods that are used at Eau Claire. The method of scaling at Eau Claire is what is termed the full scale—that is, without making any deductions for defects—and the same thing is done at West Newton—that is, for adjustment between the members of the company—that is, between the Eau Claire people and the Mississippi River Logging Company; that the proportion or percentage of the logs that each member of the Mississippi River Logging Company is entitled to take is arrived at by the amount of their subscription to the original capital stock of the company. It was not subscribed in dollars and cents, but in so many million feet per year; practically in proportion to their holding in the company; that the method of scaling what is known as the pool logs,
144 according to the full scale, is the result of an agreement between all the members of the Chippewa Logging Company and all of the stockholders.

The defendant- objected to the testimony so offered as immaterial, and the court sustained the objection; to which ruling and order the plaintiffs duly excepted.

Q. What was the reason of making or adopting that method of scaling (referring to a previous answer of the witness, in which he testified that the method was the full scale)?

A. It was much easier to find scalers who were capable of measuring a full-sized log than it was to find those to measure and make the proper deduction for the defects, and it was also thought that it would be easier and safer as between the parties to measure them in full, because they could then follow the logs more readily if they should send a detective around to see if the scalers were doing their duty as between the parties.

It would be much easier to check up the individual work of the scalers. The members all getting the same logs, it was immaterial on what basis a scale was made if it was made alike to all—that is, so far as the members were concerned.

In the division of these logs, these pool logs, among the members of the company, such of them as came down to West Newton and were rafted out there in the way I have described, it is not known which particular member of the pool will get any given brail of logs until the boat arrives there and reaches them.

Q. State what the general rule is as to whether there is a raft of logs then ready for him to take away from the booms or whether the boats usually have to wait for the logs to be sorted and rafted after their arrival there, if you know.

145 The defendant objected to the question as incompetent, immaterial, and no foundation laid.

Plaintiff's counsel here called the court's attention to the following allegations in the answer:

"That while said logs ar- passing through said boom in said slough they are gathered together into brails and rafts and thereafter towed and floated down the Mississippi river to be used for commercial purposes, and are oftentimes sold in bulk in the rafts, and in case of such sales the purchasers, as a general rule, are obliged to rely for the quantities in such brails and rafts contained upon the scaling survey and measurements made at said boom at the time said brails and rafts are made up; that when logs passing through said boom are scaled, surveyed, and measured by parties interested therein, it has been found, as the fact is, that many errors and mistakes creep in, and it oftentimes occurs that such mistakes are made purposely, so that rafts and brails when made up, as aforesaid, do not correctly and accurately show the quantities of logs actually therein, although they nominally purport so to do; that said boom Co. is and was at all the times herein mentioned owned and controlled by persons and individuals who are engaged in and pecuniarily interested in the business of logging and lumbering, and from time to time it becomes and is for the pecuniary interest of said boom company and those interested therein that correct measurements, surveying, and scaling the logs passing through said booms should not be made, and in many instances said boom company and persons interested therein have prevented and endeavored to prevent true and correct measurements, surveying, and scaling from being made through the persons duly authorized by law so to do, particularly including this defendant; that after said brails of logs are made into rafts at said booms, they are oftentimes

towed down said Mississippi river, and compensation is paid therefor to the steamers and towing companies for such towing, and such compensation is based upon the amount of timber in said rafts and each of them; that in a great many instances rafts of logs are
146 made up in said booms to be taken down and the same are taken down said river to be sawed at mills owned or controlled by persons pecuniarily interested in or controlled by said boom company or owned by corporations, persons, or firms closely allied to said boom company and its owners and stockholders and whose pecuniary interests are substantially identical with those of the owners of said boom, and it frequently occurs that where said rafts are towed down said river from said booms to mills so owned, operated, and controlled, as aforesaid, that the logs in said rafts are scaled by or at the instance of persons *persons*, firms, or corporations interested in having them appear to contain as small a quantity as possible, with the effect that they do show, when so scaled, a less quantity of logs therein than actually exists, and in other cases where the logs in said rafts are to be sold and disposed of in the market they are scaled or caused to be scaled by the parties interested therein so as to make it appear that the logs in said rafts are much greater in quantity than is actually the case; that the only way to prevent such errors and mistakes," etc.

The object of this testimony is to show that, as a matter of fact, it is impossible to show any such discrimination as is alleged in this answer, because nobody knows where the brail or raft that is being scaled is going to or who is going to get them. The logs that are to go to members of the boom company, nobody knows where the logs are being scaled; whether they will go to A, B, or C. They will go by the first boat that will come, and nobody knows which boat is coming first. Consequently, there is no object for any such discrimination as is alleged in the answer. Also the defendant testified that logs were towed according to the number of feet contained in the raft, and we propose to show that there is no object to show any favoritism or make any discrimination whatever. Will defendants admit that there is no discrimination as far as pool logs are concerned?

The COURT: There is no testimony on the part of the defendant to sustain that allegation in the answer. The question seems
147 to me to be immaterial at this time.

The court then sustained the defendants' objection; to which ruling and order plaintiff duly excepted.

The witness further testified:

The members of the Mississippi River Logging Company and down-river members of the Chippewa Logging Company, outside of the Mississippi River Logging Company, if there are any, are themselves large manufacturers of lumber. Occasionally some member will have a few more logs than he can use himself, and he, perhaps, will sell them. I should say ninety to ninety-five per cent. of the pool logs that come out of the West Newton booms are manufactured by the members of the pool to whom the logs are delivered there.

Q. Would it be possible to make a fair adjustment between the Eau Claire and the Chippewa Falls members of the pool company, whose logs are taken out at Eau Claire and Chippewa Falls, and the down-river members of the company if the logs that come through above West Newton booms were scaled what is termed straight and sound—that is, by the individual scalers using their judgment in making such deduction as would be necessary to make the logs sound, merchantable logs?

The defendant- objected to the question as incompetent, immaterial, and calling for a conclusion of the witness.

The court sustained the objection; to which ruling and order plaintiff duly excepted.

Q. How long has the business of these companies been conducted in the same way that it was conducted in 1893, prior to that time?

The defendant- objected to the question as immaterial, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

148 The plaintiff then offered to show by this deposition that the Mississippi River Logging Company had conducted the business in the same manner for twenty-two years, and that the pool had been in existence about thirteen years up to that time.

The defendant- objected to the offer and testimony as immaterial, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The witness further testified:

These logs had not always been assorted at West Newton prior to 1893. Originally we handled them over at Beef slough, on the Wisconsin side of the river.

Q. And were they handled in the same way there?

The defendant- objected to the question, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The names of the different people or corporations who were members of the Chippewa Logging Company or who were members of the Mississippi River Logging Company who took logs at West Newton and prior to the time the West Newton booms were opened took logs at Beef slough—that is, the down-river members of the pool were:

Yoemans Bros. & Hodgins, Winona; Laird, Norton & Co. and the Winona Lumber Co. of Winona; W. T. Joyce, of Lyons, Iowa; C. Lamb & Sons, of Clinton, Ia.; Dimmock, Gould & Co., of Moline; Rock Island Lumber Co. of Rock Island; Weyerhaeuser & Denkman, of Rock Island; Musser Lumber Co. of Muscatine; Hersey Lumber Co. of Muscatine, and W. J. Young & Co., of Clinton, Ia.

C. Lamb & Sons did not have any logs in the summer of 1893 that were run into the booms at West Newton to be sorted
149 out there, except such as were cut on the Chippewa river or its tributaries, in the State of Wisconsin.

The plaintiffs also read in evidence in rebuttal the deposition of G. W. CABLE, who testified as follows:

I reside at Davenport, Iowa, and have for over thirty years. I have been engaged in the lumber business for the last fifteen or twenty years as the corporation named the Cable Lumber Company. I am president of that company and have been ever since its organization. I have general charge of the business. The principal office of our company is at Davenport, Iowa. In 1893 I had one or more saw-mills for the manufacture of lumber, and it also carried on the logging business for the purpose of supplying its mills; mainly on the Chippewa river at that time.

The destination of the logs that were cut by the Cable Lumber Company on its own lands and banked on the Chippewa river or logs acquired by the company in any other way on the Chippewa in 1892 or 1893 or in prior years was our saw-mill in Davenport for manufacture there.

I don't think I ever saw defendant John H. Mullen. I know where the booms known as the West Newton booms are located on the Mississippi river. Our company had logs coming through that boom in 1893.

Q. Did your company make some arrangement or agreement with the Mississippi River Logging Company to scale such logs as they might have coming through that boom that year?

The defendant- objected to the question, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then offered to show by the deposition of
150 this witness that before the business of assorting and rafting the logs at West Newton boom commenced in the summer of 1893 an arrangement was made between the Mississippi River Logging Company and the Cable Lumber Company by which the Mississippi River Logging Company agreed to scale all of the logs of the Cable Lumber Company for a fee which was agreed upon, and the Cable Lumber Company agreed that the Mississippi River Logging Company might scale them.

The defendant- objected to the testimony, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then offered in evidence the deposition of FRANK W. MUELLER, who testified as follows:

I reside at Davenport, Iowa; I am in the lumber business, a member of the firm of Christian Mueller & Sons. I have been connected with that firm since 1879. The business of the firm is saw-milling and lumber yards.

Q. In 1893 and prior to that time where did you get your logs to manufacture?

The defendant- objected to the question as immaterial because the deponent is not a party to any of these cases.

The counsel for the plaintiff stated that the object of this testimony as well as the testimony of several other witnesses is to show that they were lumber manufacturers in Iowa, and that they cut

logs on the Chippewa river and ran them down through these booms for the purpose of supplying logs for their mills.

The COURT: It is just as well to show there were two or three as to show that there were a great many.

PLAINTIFF'S COUNSEL: I think this is material upon the
151 question of interstate commerce. If all the logs that went in there were subjects of interstate commerce, and had never become a part of the general property of the State of Minnesota, then it must be said that this is a regulation of interstate commerce, and it is for the purpose of raising that question that this testimony is offered.

The court sustained the objection; to which ruling and order the plaintiff duly excepted.

The plaintiff then offered to prove by the deposition of this witness that all of their logs during the year 1893 were cut on their own lands on the Chippewa river or bought on the banks of the Chippewa river and run down through this West Newton boom and taken to their mills at Davenport to be manufactured; and the plaintiff offered to follow that testimony up by the testimony of a large number of other witnesses that their logs came through in the same way, and by evidence showing that they were substantially all the logs that did go through the boom.

The defendant- objected to the testimony so offered, and the court sustained the objection; to which order and ruling the plaintiff duly excepted.

The plaintiff then offered and read in evidence in rebuttal the deposition of D. J. BATCHELDER, who testified that he lives in Clinton, Iowa; that he was a member of the firm of Gardiner, Batchelder & Welles in 1893 and prior to that time; that he had charge of their logging business and looking after their logs, rafting, and looking after them in a general way.

At that time they were engaged in the manufacture of logs and lumber at Lyons.

Q. Where did they get their logs?

152 The defendant- objected to the question as immaterial because these parties are not parties to the suit in any way.

The court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then offered to show by the deposition of this witness that all of their logs that were rafted from the West Newton booms came out of the different tributaries of the Chippewa from different streams, and that that had been true for a number of years before 1893.

The defendant- objected to the testimony so offered as immaterial and incompetent, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then offered to show by this witness that substantially the same agreement was made between the firm of Gardiner, Batchelder & Welles and the Mississippi River Logging Company with reference to the scaling of the logs of that firm that came

through the West Newton booms in 1893 as was made with the Cable Lumber Company.

The defendant- objected to the testimony so offered as immaterial, and the court sustained the objection; to which order and ruling the plaintiff duly excepted.

The plaintiff then offered and read in evidence the remainder of the deposition of J. B. PHELPS, who testified as follows:

I don't think Lindsay & Phelps Company, during the summer of 1893, sold any of its logs. The general course of our business is not to sell our logs. We saw them. When our logs were cut and banked on the Chippewa river or its tributaries or purchased there, they are cut for our mills and are intended to cut them there. We do most of them there.

Our company made an arrangement or agreement with
153 the Mississippi River Logging Company to scale our logs for us that year. We had a letter from Mr. Weyerhaeuser wanting to handle our logs in April—the 25th of April.

The witness then identified a paper which was marked Exhibit A as the letter referred to, and said letter was offered and received in evidence, and is as follows:

"MINNEISKA, MINN., *Apr. 25th*, 1893.

DEAR SIRS: We are obliged to scale our logs for boomage this season, and if a satisfactory arrangement can be made would like to scale all your logs passing through the boom.

We will scale your logs for 3½c. per M, in addition to the regular charge for brailing and boomage.

If you or your agent have any preference among the scalers employed here you can have the scalers you wish to scale your logs named by your agent, the scaling all to be done under the personal supervision of Mr. L. P. Smith, who has had charge of our scaling for many years and of all the scaling for the past two years.

We will guarantee that all shall be done to your entire satisfaction.

Yours truly, F. WEYERHAEUSER."

The witness further testified:

That letter was answered by our company. Here is a copy of the answer.

The paper referred to by the witness was marked Exhibit B, and the witness testified: The signature to Exhibit B is in my own handwriting. I dictated it to a typewriter and signed it myself.

Exhibit B was then offered and received in evidence, and reads as follows:

154 "DAVENPORT, IOWA, *April 29th*, 1893.

Mr. F. Weyerhaeuser, Minneiska, Minn.

DEAR SIR: Your letter of the 25th received, and in reply will say that we would like to have Mr. Smith scale our logs or see that it

is done, and by one man all of the time; and the same man should be the scaler for the Cable Lumber Co.'s logs, as we have marks owned in common and divide them sometimes to suit our convenience, and should prefer to have them scaled for what sound lumber there is in them as we might sell or buy.

Yours very truly, LINDSAY & PHELPS CO."

The plaintiff then called BENJAMIN F. NELSON in rebuttal, who testified as follows:

I reside at Minneapolis, and have for thirty-two years. My business is that of a lumberman, including in that term the business of cutting and running logs down the river to Minneapolis. I was employed in the lumber business, but not cutting or running logs during all of the thirty-two years. I commenced cutting and running logs about fifteen years ago, and have been employed in that business ever since. I am familiar in a general way with the course of business of logging upon the Mississippi river above Minneapolis. When logs come down the Mississippi river to Minneapolis they are gathered together and held by some corporation known as the Mississippi and Rum River Boom Company, I believe. At that time they are in a general mass, everybody's logs mixed with everybody's else. The logs are sorted out by that company and turned to the mills of the owners of the logs, providing the owners of the
155 logs have mills. If not, they are turned to any mill that the owner may direct the logs to go to. What are intended to go below Minneapolis are turned over the falls by this company, so that, except those logs that are intended to go below Minneapolis, all of the logs are assorted by this boom company and turned by the boom company to the several mills where the owners own mills, and where the owners do not own mills they are turned to the mills where the owners direct them to be turned.

Those that are turned over the falls are gathered in a raft by another company called the St. Paul Boom Company. No logs that are cut above Minneapolis are ever driven in a loose mass below this St. Paul boom, unless it is a log that escapes in a freshet. Then they are driven to points where they can raft them conveniently. Nearly all the logs that come over the falls and are not caught in the St. Paul boom stop in what we call Pig's Eye lake. It is a slough or lake a little way below St. Paul, six or seven or eight miles. Those that don't go in there gather in a slough below Hastings, and scarcely ever get as far as Red Wing, and it is in these places that I have mentioned that they are gathered and rafted up or put in booms, or something is done to them below.

After the logs are assorted in Minneapolis and turned into the respective mill booms they are all scaled by the surveyor general or his deputies. There are errors that occur in assorting the logs which are corrected in the scaling, and there is an account kept of logs that get into the wrong place. If by any chance logs that are not destined to go below Minneapolis are turned over the falls they are caught in the St. Paul boom and are assorted and scaled there, and an account of them is kept in the same way that there is with

those that are assorted at Minneapolis. The logs that escape
156 in freshets and go down as far as I have testified they do sometimes are gathered together and rafted or sold without being rafted, and are scaled by the same officer.

I have seen Lake Pepin, so that I have a general knowledge of what the body of water is. I have had considerable experience in driving loose bodies of logs, or in having charge of that work, above Minneapolis, on the Mississippi river, and below. I don't think there would be any logs pass through Lake Pepin that went over the falls of St. Anthony, unless they were being towed in a raft, or some other body of logs that lumbermen got together and fasten in a boom. In several years, say there was 100,000 logs went over the falls of St. Anthony, I don't believe there would scarcely any of these logs get through Lake Pepin, if they were taken care of, in several years.

Last spring there was quite a considerable amount went over that was not scaled at the St. Paul boom. That is considerably the largest amount that has gone over for a long time. As a rule, practically, all the logs that go over the falls of St. Anthony are those that are put up by a raft or brailed by the St. Paul Boom Company. They are all caught in the St. Paul boom except what logs go out in a freshet or in the ice, as they did last spring.

On cross-examination the witness testified:

Practically, every log is caught there in the St. Paul boom. Of course, some small logs may work its way under the boom to get by, but it would be such a small amount it wouldn't be worth considering. I never made any estimate of the amount that gets away in that way. I never made any examination of the amount that gets away in that way. I never knew any of them to get away; not enough to call the attention of any one to it.

157 Sometimes rafts going down the Mississippi river are broken and get scattered in that way, when the rafts break up. Sometimes below Lake Pepin they break up.

I have made an examination of Lake Pepin to ascertain the number of logs that run into it. We have had some logs escape from Minneapolis about six or seven or eight years ago, and I was appointed by the log-owners to gather them. I went to Lake Pepin at that time and made an examination of the situation and found there were no logs came there. It was several days after they escaped that I made the examination. I went down soon after they escaped, stopping at Hastings. I found there were very few logs came there, practically none. I went to Red Wing and they hadn't seen a log. I went on to Lake City and spent a day there, and found, of course, there hadn't been any logs in the habit of coming there, and on my return I found that practically all the logs that escaped were caught in what we call Pig's Eye lake and the sloughs between. They had hung up there between here and Hastings, just a few below. I base my testimony as to logs running into Lake Pepin or not running into Lake Pepin largely on that examination I made six years ago and what I have known where logs were gathered up since that and before. It would take several years for them to get down there, and

it would take several years more for them to get through Lake Pepin. Lake Pepin is twenty-eight or thirty miles long, and the wind would have to blow continually from the north or northwest to get a log through the lake, which is hardly ever the case. I presume Lake Pepin freezes at times. I don't think it would be probable that when the ice goes out it would take with it some logs that were in the lake, because the ice would be as liable to throw the logs upon shore, and a good deal more so, than it would to take them
158 out. I suppose if some were at the lower end of the lake, and the ice broke up with a northwest wind or a north wind, it would shove the logs and the ice into the river. I don't know anything about logs that come out of the Chippewa river being driven up into Lake Pepin. Whether they are as likely to be driven out of Lake Pepin as they are to be driven into Lake Pepin would depend upon the distance. They could be driven out of the end of a lake thirty miles long easier than they could be driven through the lake. Logs this side of Lake Pepin would have to be driven by the wind twenty-eight or thirty miles. That is the distance, I think, that Lake Pepin is long.

The plaintiffs also called CHARLES A. SMITH, who testified as to the method of doing business at Minneapolis and on the St. Paul boom substantially as the witness Nelson. The witness also testified:

Some logs, in the assorting of the great number that come down to Minneapolis, get into the wrong places—that is, my logs might get into the mill boom or other booms of some other owner, and *vice versa*. We call these logs, in our parlance, "exchanges." When this happens, these logs are sawed up by the company in whose boom they run, and a record is kept by the surveyor general. The owner of the logs that stray or become exchanges, as we call them, in that way never gets the identical logs. They are settled for either by paying with other logs or with money. That is the uniform practice among the lumbermen that are engaged in doing business at Minneapolis. There was no way to get at the logs for the exchanges, except by an examination and measurement of all the logs in the boom. In order to find out whether or not the logs have been assorted clean, or whether there are logs of one owner intermingled with the logs of another owner, at his mill or in his pocket, it is necessary to go over the entire mass of logs that run into the boom.

The plaintiff also called in rebuttal C. E. SINCLAIR, who testified that he has resided in Minneapolis twenty-six years; that he
159 is a deputy of the surveyor general of the second district of this State, and has been such deputy for ten years; that he manages the office and directs the scalers where to go and where to do their work; has general supervision over them; that the records or tally-sheets are turned in to him, and that he was performing the same duties about the office in 1893, and that he has performed the same duties for the entire ten years.

That after the logs are gathered together by the Mississippi River & Rum River Boom Company they are all scaled by some deputy of the surveyor general's office and the scale bills are returned to each owner. They have a system of exchange in Minneapolis, and each manufacturer has what they call a lo*k* book. He is charged with what logs he gets outside his own, and is credited with his logs when his logs go to others, and the logs that go down to the St. Paul boom are also scaled by the surveyor general in the boom after they have been assorted, and that these logs are accounted for to the owners in the same way substantially as the Minneapolis logs; that from time to time logs escape from both these booms and go down the river, and these logs are scaled by his office wherever they are picked up and accounted for to their owners.

The St. Paul Boom Company or the Minneapolis Boom Company from time to time picks up logs that stray away down the river, and have in previous years done so, and these have been scaled by our office. They have done so upon request. I don't know of their picking up any except in freshets of this kind.

On cross-examination the witness further testified:

The St. Paul boom is managed by the St. Paul Boom Company. I don't know their manager there. Our office undertakes to scale all the logs running out of that boom. The logs scaled by us, 160 which were scaled by request of the owners, were scaled at St. Paul, at the boom, while they were being brailed and rafted. We learn when the boom company is going to turn to rafting; we keep men there. We scale logs; we are scaling now, and have been this summer, the logs that got away this spring. We have a deputy at Red Wing and another at Hastings. We have two men at what we call Finnegan slough; that is probably about twenty or twelve miles below St. Paul—something like that.

On redirect examination the witness testified:

These logs that we have scaled up by special request below the St. Paul boom have been scaled by the request of the Mississippi and Rum River Boom Company.

The plaintiff also called THOMAS H. SHEVLIN in rebuttal, who testified substantially as the witness Wilson, and further testified:

During the time that these logs have been turned over the falls and since they have been turned over the falls we have had all the way from thirty to sixty million feet a year turned through the boom at Minneapolis. Last year we had a very short season and had thirty-four million feet through at Minneapolis, and we had scaled down at St. Paul boom over 60,000 feet.

Of course, we do not want them to go there, but we had rafted, assorted, and brailed in St. Paul over sixty thousand feet. Occasionally, every month or so, I have sent my men down the river to see how many of our logs came over the falls. They are watching them all the time. Of course, we don't want them to go over. We want them for our own mills. We found over 60,000 feet went down the river to St. Paul. That was less than half of one per cent. During that time we have never made any inquiry for any of our

logs below the St. Paul boom. When a log goes out of the St. Paul boom the river pirates soon jerk it out; it never gets very far; it will never get to Beef slough.

161 On cross-examination the witness testified:

I think the number of logs that reach Minneapolis in the season varies from two hundred to four hundred million feet, according to the season—some seasons more and some less; some seasons more than others. Last season I think it was some three hundred million feet. During the years from 1889 to 1893 the average, including those turned over the falls, I should think would be about three hundred fifty million feet a year.

Thereupon the plaintiff, to sustain the issues on its side, called RICHARD A. CHUTE, who testified, upon direct examination, as follows:

Have resided at Minneapolis for about four years; formerly lived at Eau Claire, Wisconsin, for eighteen years; am treasurer and manager of the Mississippi and Rum River Boom Company, and also of the St. Paul Boom Company. The Mississippi and Rum River Boom Company received the logs as they come over the dam, drives them to Minneapolis, assorts them at Minneapolis, and delivers them to the owners at their mill ponds or wherever they belong. It also turns into what is known as the St. Paul trail logs destined for below. The St. Paul Boom Company receives logs as they come over the falls, drives them to the boom limits in St. Paul, just below Fort Snelling, and there rafts them into brails for passage down the river. The scaling is done at the mills or at the ponds of the different mills; the logs are delivered at the mills. The company's revenue comes from the records of the surveyor general as to these scales, so whatever revenue the boom company receives is from these records of the surveyor general—that is, with reference to the Mississippi and Rum River Boom Company.

Q. What, if anything, is done by the company with the logs after they come down to the St. Paul Boom Company?

A. What is done with the logs?

162 Q. Yes; with reference to scaling them.

A. They are scaled as they are brailed at St. Paul.

The WITNESS: There is only an occasional lot that might slip under the boom when they are being sorted. We have a watchman for that purpose; he is supposed to catch them all, but if any one should get away and go below that it is picked up in short season. I send a crew to look after them and see that all logs are found that have got away from the boom or have drifted away from rafts; they are all picked up and scaled. I have had personal experience during the present year with large quantities of logs getting away from both of these booms and going down the river; have had general supervision of the work of caring for and securing these logs. Our crew, looking for these logs, has been as far down as Red Wing. The logs themselves have not reached Red Wing as far as I have been able to discover. Logs reach Diamond Bluff, which is about 7 or 8 miles this side of Red Wing, and that is the last point at

which we can discover any logs. The last time I was down there, just about a week ago, our man told me he had discovered a few logs in what is known as Red Wing lake, just opposite Red Wing, and he was going in there to see if there were any in there at that time. He didn't know whether they came from this lot or not, but, at any rate, he was going to see; but, with that exception, we didn't find any as far down as that. It is about six miles from Red Wing to the upper end of Lake Pepin. I also have had some experience this year with some rafts and logs that were laid up last fall down near Red Wing somewhere. They broke up this spring; some of those logs got into Lake Pepin. We have been engaged all the summer picking them out. I don't know how far down we found these logs, but most of them right this side of Lake City, I should say from what knowledge I have of it; I haven't been with the crew all the time, but have been there occasionally; most of the time has been expended above Lake City. I think that is about half way down the lake. I should say there were in the
163 neighborhood of four million feet of these logs. There were 23 brails, and I think they would average about 150,000 feet to a brail. I never had any immediate charge of a log drive. These logs that broke before they reached Lake Pepin were in rafts and brails that lay in Lake Pepin for winter quarters. They were in pretty bad shape when the ice went out when the rush of water came this spring. I was in Minneapolis during the year 1893. I was familiar with the course of business there with these two boom companies during that year. It was identically the same as it has been ever since under my charge, I think. My recollection is that in the year 1893 there were turned over the falls of St. Anthony and rafted out of the St. Paul boom from twelve to fifteen millions of feet, as I recollect it. My recollection is that they belonged, most of them, to the Mississippi River Lumber Company—more than half of them—and to J. J. Joyce and Lyons, of Clinton, and I think Mr. Betcher, of Red Wing. I was manager of the Mississippi River Lumber Company. Eventually the logs of that company went to points down the river to various parties; they were rafted without *o*rting; they were put together just as they were in the boom without putting on any particular mark. If the Mississippi River Lumber Company sold these rafts or these brails of logs to different parties or individuals, then different parties or individuals had the same mark of logs that they took down the river.

On cross-examination the witness testified:

We estimated twenty-five millions of logs went over in the spring with the spring of 1897 freshet, and I think probably that we turned over twenty millions more than went to the boom; that twenty-five millions went over during the freshet or escaped before the booms were in position; they went with the ice. As fast as these logs are gathered in Lake Pepin they are turned out loose at the
164 mouth of the Chippewa river. We put them in brails to get them across the lake and use a boat to take them across. We are hauling them out of the lake as fast as possible, as the crew can do it. We go down to Reed's landing and drop them there; we go

as far as Reed's landing and drop them just below the lake. From that point they are floated as loose logs. We have no scale of them as yet and cannot tell how many have floated down. The scale is made at West Newton boom.

Plaintiff then called CHARLES A. STAPLES in rebuttal, who testified as follows:

I reside at Stillwater, Minnesota, and have ever since 1865. My business is lumbering, including in that the getting out and handling of logs. I have been employed in that business during the time when I have lived in Stillwater. I have had personal experience in almost all branches of the business of logging. I know the general course of the business at Stillwater. The logs that come down the St. Croix are first gathered together and assorted
165 at the St. Croix Boom Corporation boom above Stillwater, I should think, about a mile and a half. It depends on the stage of water how far that is above the head of Lake St. Croix. The limits of the boom extend very near down to the limits of slack water. The lower end of their stringers are virtually at the head of the lake. The water is very slack. I can't tell you how many logs during all the years from 1888 to 1893 came through the St. Croix Boom Corporation's boom per annum on an average. The logs came from Wisconsin and Minnesota. They have every year since I have been there. When the logs are assorted there they are taken to the different rafting grounds and the saw-mill points.

The boom company at Stillwater does not raft the logs. These that are taken to the mill ponds are usually sawed by the manufacturers at Stillwater, and those that are taken to the rafting grounds are rafted into brails, as a general thing. Some of them are sold and go below; some of them are afterwards bought and sawed by the saw-mills. The majority of the rafted logs go below. The logs are rafted in brails, surrounded with boom sticks and with lines to hold them, arranged parallel with each other in the boom. The individual logs are not fastened together to any extent. After the logs come out of the St. Croix Boom Corporation's boom they are all measured by the surveyor general, and an account kept of the measurements of the different marks. Each log is scaled to its own mark. Some logs escape from the St. Croix Boom Corporation's boom that are not immediately delivered to the owner; they get away. The lake crew is supposed to pick up all these logs; they are kept on the lake for that purpose and they take the logs to the boom, where they are scaled again; they are scaled at the boom to the mark. These logs that are picked up in this way are called lake logs. They are taken around and given to the people who have log credits.

166 After these logs are picked up and scaled there are certain credits given to the owners. These logs are subject to the owner's demand. He takes the logs at a scale there or they are placed to his credit. They are sold and scaled out again to the

parties who have a credit or to some party who has an order on lake credit for these logs. They are scaled out again.

In assorting logs at the boom, logs of one owner get scattered with logs of another owner to a certain extent. When that happens the real owner gets his logs in this way, he gets credit when the logs are scaled from the board of trade. These logs are scaled; all scattering logs are scaled up and an account is kept with the board of trade. That account with the board of trade is allowed to run until fall. In the fall they have a general settlement. So many of my logs have gone to the board of trade and some of the board of trade logs have come to me, and whichever way the balance is the settlement is made. That is paid in money, at the price fixed by the board of trade. There is liable to be a change at any time and they have a monthly meeting. They go in there at the regular price as board of trade logs. For several years they have run at about one price, six, eight, nine, and nine and one-half dollars, according to the size of the logs, but that is liable to change at any time at a meeting of the board of trade. This board of trade is in substance an association of about all of the lumbermen engaged in doing business there. I don't know but all belong to it.

When logs are rafted and sent down the river, logs that belong to one owner do not always go to the same men below. They are liable to be sold to any one and delivered at the mills wherever they are located. The owners of logs are not always mill-
167 owners. Mill men frequently buy logs from different parties, so that different parties down the river who take the rafts and tow them down the river may buy the same mark of logs at different times all the year.

I have had personal experience in handling and driving large bodies of logs on the St. Croix and its tributaries. I know where Lake Pepin is and the size generally of the lake, and also of Lake St. Croix. Lake St. Croix is not a straight body of water from Stillwater to its mouth. The direction of it changes frequently. I am not so familiar with Lake Pepin as I am with Lake St. Croix. I have been there but very little.

The chances are very remote of a loose log—that is, one that is not fastened in a raft or a boom or somewhere nor being towed by boat or other propelling power—getting from Stillwater down through Lake St. Croix into the Mississippi river.

On cross-examination the witness testified:

The logs that get into Lake St. Croix—the loose logs which are scaled up again at the lake boom—are scaled so that each owner can get his logs and not lose them. They had been scaled by the St. Croix Boom Company for boomage perhaps three miles or three and a half miles above the lake boom.

I suppose this board of trade is a corporation and they act as a sort of clearing-house by which our exchanges are made.

The plaintiff then called SAMUEL MCCLURE in rebuttal, who testified as follows:

I live at Stillwater and have continuously for twelve years; most

of the time for thirty years. My business is logging and lumbering. I have been engaged in this business thirty to thirty-two years, in all branches. I was engaged in that business during the years 1888 to 1893, inclusive. I was interested in more than one firm or corporation which had logs coming down the river. Take
168 all of the logs that I was interested in coming down the river, there were from fifteen to twenty-two millions. The annual output there, on an average, was close to four hundred millions; from 375 to four hundred millions, some years as high as 452 millions, other years down to 350 millions odd.

The witness then testified with reference to the manner of doing business and handling and scaling logs at Stillwater, substantially as the witness Staples had done. He also testified that the logs are rafted in Lake St. Croix, from the head of the lake down for about six miles. The lake itself is twenty-nine miles long, so that
169 from the lower end of the rafting grounds it is twenty-three or twenty-four miles to the foot of the lake.

It is dead water all the way from the head of the lake to the foot, except that at Catfish bar, twelve miles down, and at the Hudson railroad bridge, six miles down, there is a perceptible current. At each of these places the channel narrow- up very much. It is only 130 feet at the upper end at the Hudson bridge. There is a bar across the river at the Hudson bridge and at Catfish bar, so that except in high water logs will not float anywhere except in the channel at these places. It is the bar at each place that narrows up the channel. At the Hudson bridge, where that bar comes out, the lake is between half a mile and three-quarters of a mile wide, and down at Catfish bar I should think it was nearly a mile. Lake St. Croix has several quite perceptible crooks in it.

Q. From what you know of the character of a saw-log and the handling of it, and from what you know of Lake St. Croix and Lake Pepin, I wish you would state what the chances would be or what the probabilities would be of a loose saw-log, not being in a raft or boom or any body of logs, getting, say, from the rafting grounds in Stillwater down through Lake St. Croix and through Lake Pepin.

A. They say there is nothing impossible, but I should think it very improbable of it ever getting there without help other than natural help.

The witness further testified:

I did not nor did any of the firms with which I was connected during the years from 1888 to the present time ever make any inquiry or search for any of our logs below Lake Pepin.

On cross-examination the witness testified:

These logs, which are made up for down-river points, are sometimes made up two logs deep. The logs are all loose inside
170 of the boom. One is laid crossways and the other makes a coupling or binder. The top tier is laid crosswise, which binds the two together. The booms that are put around outside are the size of one log. I don't think any of the rafts which I have sent out have been broken up at the bridge at Reed's landing. I

have known that that did happen, but not at the bridge, but above, between Lake City and the bridge.

Lake St. Croix is the last part of the St. Croix river and empties into the Mississippi river. The lake extends clear to the Mississippi river. The water of the St. Croix passes down and eventually reaches the Mississippi river.

Plaintiffs also called JAMES LANE, in rebuttal, who testified as follows:

I reside at Stillwater and have for 38 years. During that time my business has been working on the river and in the woods, in the logging business, and on the lake. During the summer season for some years past I have been employed by the St. Croix Boom Company taking care of what they call the lake logs. I have had charge of the crew that has been doing that work for fifteen years. Lake logs are logs that get away from the booms and from the rafting grounds. I pick them up and put them in what we call the lake boom—those and some that we called the scattered marks. I never found but very few logs further down than the Catfish bar. We go down as far as Kinnikinick and get a few scattering logs, but very few. Kinnikinick is about eight miles from the lower end of the lake. A little stream comes in there on the Wisconsin side. There are no pine logs come into the lake out of that stream. I have never been on Lake Pepin. In my judgment and from my experience, the chances would not be very good of any loose logs getting from the rafting grounds at Stillwater down through Lake St. Croix unless they were in a boom or raft towed down. We pick up below what we call the Hudson bridge, about twice a year, all the scattering logs; pick them in in the spring and in the fall. I only go down to Catfish bar about once a year, and below that about once in two years. In the course of each season I pick up from 300,000 to 500,000 in the entire lot out of the whole season's
171 run. You will find them strung along on both sides of the lake shore down as far as Catfish bar, but the majority of them on the Wisconsin side below Hudson bridge come in around that way and get up into Catfish bar, so that it is pretty hard for logs getting adrift at Hudson bridge to go down below Catfish bar. The majority of these logs are lying on the Wisconsin shore that I pick up. During the entire time that I have been carrying on this business I think the most logs I ever found below Catfish bar was about a hundred at any one time. I suppose in the fifteen years I have found five hundred logs; that would be about 40,000 feet.

Plaintiffs then called H. J. MCKUSICK in rebuttal, who testified as follows:

I live in Stillwater and have for about thirty-six years; am engaged in the logging business. I have been agent for Mr. William Sauntry and for Musser, Sauntry & Co. for twelve years. I was with Mr. Anderson when he was in business before he died and the Ann River Logging Company. During the years 1888 to 1893, inclusive, I was at work for William Sauntry and the Musser-Sauntry

Land, Logging and Manufacturing Company and the Ann River Logging Company. I should say on an average I handled eighty-five to ninety million feet for these companies for six years, perhaps one hundred million. I should say we handled over one-half the cut on St. Croix. Sixty per cent. to sixty-five per cent. of the logs I had charge of went below. Out of the seventy-five to eighty million each year that we handled about forty million were cut and brought down by Musser, Sauntry & Company. After these logs were sorted out and rafted in the way the witnesses have stated here they were not all taken down the river by the Musser-Sauntry
172 Company; none of them at all were taken down the river by the company. After being rafted they were sorted and rafted and scaled and they were delivered to the members of the firm comprising the Musser-Sauntry Company, and about two-thirds of the total amount was taken down to the mills in Iowa and Illinois of Weyerhaeuser & Denkman and Dimmock, Gould & Co., and some to the Musser Lumber Company of Muscatine. The balance was sold on a log scale and went to other points. Musser-Sauntry logs were all put together. They rafted with reference to their own logs. For instance, Musser & Sauntry would have half a dozen different marks; they were all rafted together, these half dozen marks; then when these different members of the company took away logs Weyerhaeuser would take some of the same marks that Dimmock, Gould & Company did. Musser-Sauntry logs were sold to different buyers, mostly down-river parties having mills located along the river. Mostly sold to saw-mills located on the Mississippi river in Iowa and Illinois and some in Missouri. That was generally true of all logs I handled there. I think it is generally true of all logs that are taken below.

GEORGE W. REED was called by the plaintiff in rebuttal and testified as follows:

I live at Fulton, Illinois. I have lived there all my life. I have been in the river business—master and pilot on a steamboat; have been following that profession sixteen years, running towboats. I have towed logs through Lake Pepin and Lake St. Croix since I commenced piloting more or less every year. I never towed any from St. Paul.

Lake Pepin is not a straight body of water having one general direction; there are quite a number of crooks in it. When
173 you come in at the head of the lake you run almost east, then you run off to the right again, and then you turn to the east again. You go probably twelve miles before you turn to the right. That brings you down to what is called Point no Point. I don't know how much you alter your course there. It makes quite a turn when you round the point. You are still out of sight of anything behind you. Well, you are running a little bit southeast. Then you turn back to the east again. There is no perceptible current in Lake Pepin—not that you would notice after you got in at the head. I have seen loose logs—logs not bound up in a raft or boom—in Lake Pepin or along the shores at the upper end. The

wind on Lake Pepin changes about every time you change your course; it seems like it when you are going through there. We always figure to go through on the windward side, to get out of the wind as much as possible. It seems whenever we go around a point or a creek the wind hits us just as hard as ever. It changes, I should think, from the direction of the bluffs there. If you stop pushing a raft of logs and let them drift in Lake Pepin, it would go anywhere in the direction of the wind; generally speaking, the way the wind is blowing; that is the way it would go. I don't think loose logs not being propelled or pushed or driven in any way would ever go in Lake Pepin from head to foot.

On cross-examination the witness testified:

I have not had so much experience with loose logs as I have with towing them and rafting them in the rafts. If loose logs are found below Lake Pepin, logs bearing the mark of the St. Paul Boom Company, I should say that — might have gotten out of rafts down there and broken up on the bridge, or possibly something of that kind.

174 I don't say that if a raft breaks up a short distance from the foot of Lake Pepin that the logs could not get out of the lake. If they were broken up at the mouth and the wind was in the proper direction, they would blow out if they did not blow to one side. I have seen the Chippewa logs sometimes come out of the mouth of the Chippewa and blow up, come upstream. If the wind was in the right direction, they would blow out again, I suppose.

I run the steamer Weyerhaeuser for Weyerhaeuser & Denkman—Mr. Frederick Weyerhaeuser. We have considerable wind going through Lake Pepin with our rafts sometimes. It hinders our headway. The winds are very bad on Lake Pepin in storms. I have seen rafts broken up there.

On redirect examination the witness testified:

When rafts break up in Lake Pepin we generally pick up the logs or hire some one to do it. I never have had any experience of that kind myself. All I know is what I have been told with regard to the picking up of them. I have not had any experience in picking them up there. I have been fortunate enough to get through without breaking. When logs blow up from the mouth of the Chippewa into Lake Pepin, if the wind is blowing towards the beach, it will beach them just as quick as they get to shore. If they go on shore, they will not go off without being rolled. When the water rises up the chances are they will go up further. They might if the wind was blowing that way, and they might not. I have never had any experience with the ice there; I don't know anything about it.

Albert F. Hollingshead was then called by the plaintiff in rebuttal and testified substantially as did the witness Reed.

175 Robert A. Cassidy was then called by the plaintiff in rebuttal and testified substantially as did the witness Reed.

SAMUEL MCCLURE was recalled by the plaintiffs in rebuttal, and testified that the proportion of the annual output of logs from the St. Croix that was sent down the river each year during the years 1888 to 1893 was about one-half the cut; rather less, if anything. I should say the total annual cut was more than 375 millions in those years. The average cut of lumber out of the St. Croix logs above Lake Pepin in these years would be about 200 millions.

The plaintiff then read in evidence the cross-examination of J. B. PHELPS, as contained in his deposition, which is as follows:

The logs that came down through the West Newton booms in 1893 were in charge of the Mississippi River Logging Company for booming and scaling. We turned them over to them and they handled them to suit themselves.

Some years we exchanged some of our logs sometimes. I don't know that we ever sold any of them outright until the last two or three years. We had exchanged some with Mr. Cable, as our mills were there close together. We had an understanding; he would sometimes want more than he could get, and we exchanged and took them back at the same price.

These particular brails of logs to which Mr. Clapp has called my attention I don't think I ever saw personally. I think we had a few logs from Minnesota in the year 1893. They were from the St. Croix waters and not otherwise. We did have some logs from the main Mississippi river. I don't remember if it was that year. Sometimes we towed them down the river. We did not have
176 any further correspondence with Mr. Weyerhaeuser or with the Mississippi River Logging Company that year in regard to scaling these logs. I was not interested in 1893 in the Chippewa River Logging Company or in the Mississippi River Logging Company.

On redirect examination the witness testified:

Our logs that were brought down the river from any point above the mouth of the Chippewa were run in rafts. The rafts above the mouth of the Chippewa were rafted at Stillwater or at St. Paul and then towed down by boats.

On recross-examination the witness testified:

Rafts coming down from above the Chippewa were broken up sometimes. I think I have heard of their breaking up. It becomes necessary then to gather the logs together and re-raft them. I don't think we ever had any broken up from the St. Croix river.

The plaintiffs then read in evidence a portion of the deposition of PEYTON S. DAVIDSON, which was not read in the case in chief, which was as follows:

The Davidson Lumber Company had been cutting a great portion of its logs from the Chippewa river prior to the season of 1892 and 1893. When these logs were cut and banked on the Chippewa river, ready for driving, they started for West Newton. La Crosse was their ultimate destination. After starting for West Newton they are sorted out and delivered to the Davidson Lumber Com-

pany or its agents. The purpose of the Davidson Lumber Company after they were sorted out at West Newton was to bring them to La Crosse and saw them. The Davidson Lumber Company
177 did not in the season of 1892 and 1893 cut any logs or procure any to be cut in the State of Minnesota anywhere, and it did not cut or procure any logs to be cut anywhere in Wisconsin that would come into the Mississippi river above the mouth of the Chippewa river. The Davidson Lumber Company cut all of its own logs on the land it owned for manufacture; during the time of cutting their own logs they would buy some lots of logs that went in as their own, meaning by that they bought them on the bank or in the woods, though our company made an agreement with the Mississippi River Logging Company in the spring of 1893 to scale our logs that might come through West Newton booms. All of our logs that came through that year were scaled by our scalers pursuant to that agreement.

On cross-examination the witness testified as follows:

This agreement for scaling was in writing to this extent: there was a letter written to our company from the Mississippi River Logging Company, signed, I think, by Mr. Weyerhaeuser, that they would scale our logs for a certain price and take care of them and hold us harmless from any damage. They would scale them and give us the logs with the scaling bill.

On redirect examination the witness testified:

I think we can find that letter.

On recross-examination the witness testified:

By stray logs I mean this: The loggers that have logs that come to the slough; they would come in mixed when they came to the slough, and in sorting out each man's lot of logs they lose some marks and do not all go to the proper place and they run out to some particular place where they bank them and they call them stray logs and are sometimes sorted out on the river. We may get them in the course of exchange. We would cut so many thousand feet of logs, and are allowed so many, which go to pay short-
178 age, which they would have. That shortage is made up out of stray logs. I don't think we bought any logs in Minnesota in 1893. I think not in prior years. I might have bought a few, but I have no recollection of buying any. These logs to which I refer came down the Mississippi river in 1893 to West Newton in charge of the Mississippi River Logging Company. They came down intermingled with a large number of other logs belonging to other parties, and I made an arrangement with one of the companies to sort them and scale them. I do not know as I am competent to tell you what the practice had been as to scaling prior to 1893. My knowledge is confined to Beef slough. Perhaps we had logs coming through West Newton in 1892. I do not recollect. I recollect about 1893 because our main channel was coming there in 1893. I do not recollect whether it was coming there in 1892. If West Newton works were in operation in 1892, we had logs coming through there. I have no recollection of any scaler in Minnesota ever scaling any of our logs, but

I would not state that definitely. Our logs had been scaled by a fellow named Smith, in Wisconsin, and if anybody of the other State scaled them, I do not recollect it. As far as scaling was concerned, to a great extent, I know nothing, except that they were all turned over by us to the Mississippi River Logging Company. I suppose they took charge of the logs and were to bring them down to West Newton and get them through the sorting works before they were delivered to us. There was a letter that they would take the logs and scale them and deliver them to us without any further cost or trouble. I do not understand that we gave up absolute charge of the logs at any time. We had a representative at the slough—a man who represented our interests there—Mr. Chapman. We exercised authority over the logs from the bank down to the boom. We had a man on the logs. My son
179 was one. Generally, from the time we commenced to log until we got through, we had some men on them.

I don't know as I can tell you every detail of what they did. They did what anybody did who had logs in the river; they made contracts for logs, contracts for putting in logs; look over the logs and see how they were running; see how they were put into the stream; if there was any great amount of logs back. I cannot tell everything. My son did that. I had also a man named Charles French on Chippewa river. He scaled on the banks of the Chippewa, where they were lying. I can't state just the number of years that the Mississippi River Logging Company did business for us in that manner, but we never made any agreement with them that they should take the logs and run them, except this year.

The first instance of that agreement was the letter from the Mississippi River Logging Company. I do not know anything about Mr. Mullen scaling. From the date of this letter, I think the arrangement was made along in February. I had no knowledge of Mullen's scaling there or when he was to commence; did not know that he was going to scale there that summer. I would not say I had heard anything about it, but I had nothing to do with that. I did not know anything about it. I knew nothing about when he was going to commence scaling. I did not have any notice from Weyerhaeuser or any of his men. I was not interested in the Mississippi River Logging Company or the Minnesota Boom Company. I was not a member of these so-called pools. Neither was our company. Mr. Weyerhaeuser was not interested in our company. I do not think I knew of Mullen's scaling at the West Newton booms in 1893 until after this attachment came on. I mean the attachment on the logs.

180 On redirect examination the witness further testified, being shown a paper marked Exhibit C:

This looks like the letter I testified we received from the Mississippi River Logging Company in 1893 in reference to scaling our logs. I can't say positively it is the identical instrument. As I remember the contents of the letter I received, that agrees with it.

The letter marked Exhibit C was then read and received in evi-

dence, and is exactly like the letter, Exhibit A, referred to by witness Phelps.

The plaintiff then offered in evidence the depositions of WILLIAM E. SAWYER, GEORGE H. RAY, and LUCIUS COLEMAN for the purpose of showing that the logs of the Sawyer & Austin Lumber Company, of which Mr. Sawyer was secretary, and the logs of the Gem City Saw Mill Company and the Hannibal Saw Mill Company, which were represented and controlled by the witness George H. Ray, and the logs of C. L. Coleman, that came through the West Newton booms in 1893, were cut upon the Chippewa river and destined, all of them, to be taken to the saw-mills of the Sawyer & Austin Lumber Company, at La Crosse, the Gem City Saw Mill Company, at Quincy, Illinois, the Hannibal Saw Mill Company, at Hannibal, Missouri, and the C. L. Coleman saw-mill, at La Crosse, Wisconsin; that each of those owners made an agreement with the Mississippi River Logging Company to scale all of their logs that might come through those booms in that year, by an agreement substantially similar to the agreement which has been testified to by Mr. Davidson and by several other witnesses; this testimony to be followed by testimony showing that the logs of those parties just named and of all other parties whose depositions have been excluded
181 by the court were substantially all of the logs that came through the West Newton boom in 1893.

The defendant- objected to the testimony so offered as immaterial and incompetent. The court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then read in evidence in rebuttal a portion of the deposition of JOHN PAUL, not read in the direct case, which is as follows:

The John Paul Lumber Company had logs coming through the West Newton booms in the year 1893. Some of these logs may have been purchased by that company. They were cut on the Chippewa river and its tributaries. When they were cut and banked ready for driving, they were to be taken down to the Mississippi river. They were to be taken by the Mississippi River Logging Company and sorted at the booms up there. There are two companies, one that drives the logs down to Eau Claire, and they are sorted there and some of the logs taken out, but not any of my logs are sorted there. They are run down to the works of the Mississippi River Logging Company and brailed and rafted there as I desire and scaled and delivered to me. Those works are what are known as the West Newton slough. After we get them sorted out into rafts and brailed as we desired, they were delivered to us. We took them from there to La Crosse; they delivered them to us there. We disposed of them, either taking them to La Crosse or disposing of them to be taken down the river.

Q. In and prior to the year 1893, what proportion of the logs that were sorted out and delivered to you at the sorting works were

sold by you and what proportion manufactured at your mills in La Crosse?

The defendant objected to the question as immaterial and incompetent.

The PLAINTIFF'S COUNSEL: We offer to prove by this depo-
182 sition that 90 % of the logs referred to in the question were manufactured by the John Paul Lumber Company at La Crosse.

The COURT: I do not know that I understand the point of your offer.

PLAINTIFF'S COUNSEL: The point is to show that when these logs were cut and put in the river they were destined to pass through this boom to La Crosse.

The court then sustained the objection to the question; to which ruling and order plaintiff duly excepted.

Our company made an arrangement with the Mississippi River Logging Company to scale our logs there that year. Our company was written to by Mr. Weyerhaeuser and we wrote him a letter, of which we have a copy in our letter book. I have here a copy of the letter we received from the Mississippi River Logging Company, or from Mr. Weyerhaeuser, in reference to this scaling. This entire agreement was made by way of letters.

On cross-examination the witness testified:

Mr. Weyerhaeuser did not urge me to begin this suit. I never had a word of conversation with him about bringing this suit.

In turning my logs over to his scalers to scale I told him that I would understand that his company would have to stand between me and any damage from any other surveyor. That was at the time we made the arrangement. I mean by the other surveyor Mr. Mullen. Under this arrangement with Mr. Weyerhaeuser, he or his company were to take our logs and pass them through the booms there, at West Newton, and sort them out from the other logs that came down the river. I do not remember whether we got logs from Minnesota in 1893. We probably cut some from the St. Croix, and those logs were cut with the intention of having them
183 brought down to La Crosse. I think I can tell exactly how many St. Croix logs we cut in 1893.

Under the arrangement between us and the Mississippi River Logging Company for bringing these logs down to West Newton and sorting them, the logs were run by the Mississippi River Logging Company, brailed and scaled, and delivered to me for so much a thousand. The arrangement for brailing and scaling was not made at the same time. It was a separate arrangement.

On redirect examination the witness testified:

If we got any logs on the St. Croix river we got some of them on the bank and bought some logs at Stillwater. I did both, and acquired whatever we acquired on the St. Croix in one of these three ways. These logs as they came down the St. Croix river were all sorted out and delivered to us or our agent on the St. Croix at or near Stillwater, and from there they were brought to La Crosse by

towboats and rafts. None of the logs that were cut by us from our own lands or bought on the banks of the St. Croix or its tributaries were intended to be run down into the West Newton booms.

On recross-examination the witness testified:

It sometimes happened that in bringing a raft down from Stillwater the rafts were broken up. I presume it did not happen in 1893. I know from the amount of logs we received at La Crosse. We count every raft we get. We get the scale bill in advance. I can't recollect that there was a single raft broken up. We never had one broken up from the St. Croix. We have had some broken up from the slough; never had any broken above the slough.

Plaintiff then read in evidence in rebuttal the deposition of JOHN JAY PAUL, who testified as follows:

I am twenty-eight years old. I am the son of Mr. John Paul; am secretary and treasurer of the John Paul Lumber Company; have held that office since October, 1896. I have been connected with the company since the summer of 1892. I know the
184 John Paul Lumber Company received a letter signed by Mr. Frederick Weyerhaeuser in reference to the scaling of the John Paul Lumber Company's logs at West Newton boom in the summer of 1893. That letter is not now in the possession of our company. I do not know where it is. I know to whom it was given. It was handed to Mr. Thomas Simpson. That letter was answered by the John Paul Lumber Company by another letter written in answer to it. I cannot say whether the John Paul Lumber Company received another letter from Mr. Wyerhaeuser or the Mississippi River Logging Company in answer to that letter. I have a copy of the letter which I refer to as having been received by our company from Mr. Wyerhaeuser.

(Witness produces copy.)

I did not make this copy myself. It was made by a stenographer. I was present and helped compare it with the original. I read one copy and R. H. Paul the other.

The paper was then marked Exhibit F, and was offered and received in evidence, and is precisely similar to the letters identified by Mr. Phelps and Mr. P. S. Davidson.

Plaintiff then called Mr. FREDERICK WEYERHAUESER in rebuttal, who testified as follows:

I reside in St. Paul, and have for five or six years. Previous to that time I resided at Rock Island, Illinois, thirty-five years. I came to Rock Island in 1856, and have been engaged in logging and lumbering nearly forty years, pretty near all the time since I came to Rock Island. I commenced logging on the Chippewa river in 1868 or 1869. Before that time I had general knowledge of the business on the river above there, where the logs come from. I bought more or less logs above the Chippewa at the begin-
185 ning. During that time since I have been engaged in that business there have not been any pine logs which have come

into the Mississippi river from the banks where they were cut above the Chippewa without having been first sorted and put into rafts, except a few logs that came out of Willow river some twenty years ago, and which were rafted at Hudson. There have not been during the time that I have been in business any pine logs coming out of any of the tributaries of the Mississippi river between Minneapolis or the falls of St. Anthony and the Chippewa river except such as have come out of the St. Croix river.

I have carried on business on the St. Croix river, either personally or through companies in which I am interested, ever since 1868 or 1869. I am president of the Mississippi River Logging Company, and have been about twenty-four years; am also president of the Chippewa Logging Company; have been its president since we organized, in 1881.

Q. When the Mississippi River Logging Company was organized who were the members of it?

Objected to as immaterial.

The plaintiff then offered to show by this witness that the members of the Mississippi River Logging Company, some eight or ten of them in all, were all lumbermen or manufacturers of lumber, residing or having their places of business in the State of Iowa, Illinois, and Minnesota, and that the purpose, and sole purpose, of the organization was to facilitate and render less complicated the driving and handling of their logs after they were put into the Chippewa river, and perhaps the Black river, and that the general course of business of that company has always been substantially that all of the logs that were cut by or for the company were run down the Chippewa river first to Beef slough and afterwards to West Newton slough when the work was moved over there; that the logs belong-
186 ing to the company were all sorted and put in one place under one head, although there were a great many different marks, and that as fast as those logs were sorted out they were divided among the members and taken away by them to their several places of manufacture, according to the interest of each of the members in the company, which interest was determined by the amount contributed by each of the members in any one year to the fund of the company, which was used in acquiring the logs which it did acquire, and that the logs of the Mississippi River Logging Company and of the Chippewa Logging Company below Eau Claire constituted at least two-thirds of all the logs that came down that river in every year, including the year 1893.

The defendant objected to the evidence so offered as immaterial, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

Q. During the year 1893 and years prior to that time as far back as 1889, you may state whether or not all of the logs that came out of the Chippewa river into the West Newton booms, outside of the logs that were owned by the Chippewa Logging Company and the Mississippi River Logging Company, came there under any agree-

ment or arrangement with the several owners; and, if so, what the agreement was.

The defendant objected to the question as immaterial and because the agreement has been shown already.

Counsel for plaintiff stated that the agreement, as far as the cases of Lindsay & Phelps Company, John Paul Lumber Company, and Davidson Lumber Company, has been shown, and I am not asking to show that over again. The proposition is to show that the Mississippi River Logging Company and the Chippewa Logging Company put their logs in there, and also to show that the other owners of logs, of logs that came in there, agreed with these people
187 that they should take them and put them through their booms, sort them, scale them, and deliver them to them rafted.

COUNSEL FOR DEFENDANT: A number of depositions have been offered here for the purpose of proving this matter and they have been excluded thus far as being immaterial.

COUNSEL FOR PLAINTIFF: That is true, and that is the reason I make the offer by this witness, because these depositions do not cover all of the logs.

The court then sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then offered to show by this witness that all of the logs that came down the Chippewa river and did not belong to the Mississippi River Logging Company or to the Chippewa Logging Company were turned over to the Mississippi River Logging Company; that there was an agreement by which the company was to drive the logs down the Chippewa boom and assort them and raft them and deliver them, rafted, to their respective owners at the foot of the West Newton boom.

The defendant objected to the testimony so offered as incompetent and immaterial. The objection was sustained by the court; to which ruling and order plaintiff duly excepted.

On cross-examination the witness testified:

I was president of the Minnesota Boom Company in 1893. I never had any stock. I think I had been its president perhaps from its organization. I am not sure about that. I spent a good deal of time on the Chippewa, but not a great deal at West Newton. I never personally made any examination as to what logs came into the Mississippi river between St. Anthony falls and the Chippewa. I had an estimate of the amount that goes in there. I had to see what went through the booms before I could pay them. I
188 only know what went into the booms by what somebody told me.

On redirect examination the witness testified:

It is not true that all I know about whether logs that came into the Mississippi river or any of its tributaries above the Chippewa, except the St. Croix, is what I have learned from an examination of my books. I personally know that logs never came from any-

where except a few that came in out of Willow river twenty years ago, and that is a tributary of the St. Croix.

I have obtained that knowledge by driving up and down the river and buying logs of these people, and driving through the pineries, and knowing where the pine timber is situated, and I do know where the pine timber is situated in both States.

The plaintiffs then called JOHN H. MULLEN, one of the defendants, in rebuttal, and stated that they proposed to examine him, under the provisions of the statutes of Minnesota, as an adverse party.

Q. When you commenced scaling logs at West Newton, or your deputies did, in the spring of 1893, you did not have any record in your office of log marks, did you?

The defendants object to the question, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then offered to show by this witness that he did not have in his office, either at the time he commenced scaling or at any other time in 1893, any record of log marks which had been made in pursuance to the provisions of the statutes of this State.

The defendants objected to the introduction of such evidence as immaterial, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

189 I have in my office a record of these two scale bills which were offered in evidence and which were marked "Defendants' Exhibits 3 and 4." Such records as I have are here. I think the book which I am now shown, and which is marked on back "Bill book, surveyor general's office, 4th District, M," contains the only record of the May bill in the book; there is an office copy, I think, in addition to that, which is substantially the same, I suppose—exactly the same, as far as I know. I mean a pen and ink or pencil copy. I suppose it to be the same. Of course, I have not personally compared it. I don't know whether that is the only record that I know of in my office of this bill which is recorded in any book. About this time I was taken sick and was out of the office a good deal. I know that there were no books when I took the office. I had a set of books made substantially the same, and purport to be substantially the same as in Minneapolis, and this book was differently arranged from what I intended, and I had another book that I intended to make a continuous record of these bills in. I don't know that they were ever recorded in it; I was taken ill about that time; I don't know where the book is; during my sickness the books were removed from the office. I have searched for it, but I don't know that it was ever made up complete; I don't know that it was. I am unable to find in my office any other record of that scale bill than this one and another copy which is on pieces of paper connected the same as the scale bills, with fasteners.

Plaintiff then offered in evidence pages 237 to 261, inclusive, of the book referred to by the witness for the purpose of showing that the first bill which has been offered in evidence and marked

Exhibit 4 has never been recorded in the office of the witness, and the same was received in evidence, and a copy of the first and last page thereof is hereto attached and marked "Exhibit N." The other pages are similar, differing only as to marks and number of feet.

190 The witness further testified: I am not sure that there is any book in my office in which the second bill which has been offered in evidence and marked Exhibit 3, which is the June bill, has ever been recorded, except a letter-press copy of the original bill. The book which is now shown me is the one I refer to, I think. I saw none that I am sure of. I do not mean by that that there might have been some record made there or some book that I don't know anything about, except in this way: When this book which I had here a few moments ago, the first one, came, I made up my mind it was not just the kind of a record I wanted for this continuous work and I got another book intended for that work. While we were getting out the June bill letter-press copies were taken of that bill at that time. I was sick and but little of the time in the office. If I had been asked if there was another book before I looked, I should have said yes. I supposed there was, but I have been unable to find it and so concluded that there was no other record kept. The books were taken out of my office at the time of the commencement of this suit. I don't know by whom. The office room that I had used in the building I had used for an office was given up by me. They may have been removed by Mr. Cronk, who is here; possibly by the owner of the building. I had nothing personally to do with moving them. I think I was in bed with a leg sawed off at that time. All of the records of my office, so far as I know, have been for the past year in an office occupied by me at Wabasha up to the time that they were sent up to the attorney general's at his request. I think that was some time along during the past winter. Up to that time they had been in my possession and under my control all of the time. When I got able to be about I found them in my office at Wabasha.

The letter-press impression referred to by witness was then marked Exhibit D, and the plaintiff offered in evidence all that part of the book which precedes the letter-press copy of the certificate which is attached to Exhibit 4, stating that witness
191 scaled these logs, and claims a lien upon them for a certain amount, for the purpose of showing that no record was ever made of Defendants' Exhibit 4—that is, that part of it that constitutes the scale bill; and the same was received in evidence and is hereto attached. No other evidence of any record of either of the scale bills, Exhibit 3 and 4, was given or offered by either party.

The witness further testified:

I did not myself keep these books—not as a whole. I did some of the work of making up these Exhibits 3 and 4—that is, I made the June bills. I think I can tell if my attention is called to a particular mark of logs which appear from this scale bill to have been scaled in any one day, where the original tally-sheet is.

The witness was then excused, and the plaintiffs recalled E. E. SINCLAIR in rebuttal, who further testified as follows:

I have in my possession, in the office of the surveyor general, all the records of log marks in the second district. I have examined these records for the purpose of ascertaining whether any marks which are shown upon the sheet of paper which is now handed me, marked Exhibit E, are recorded in that office.

The one opposite which I have placed a check-mark is recorded; none of the others. There is nothing exactly like the other mark; it is similar, though. There is one that would be taken for that mark on a log. The one I have indicated is not exactly like the one I have on record; this has two notches. We have what is called girdles; they are longer than a notch, but it might be mistaken and called the same—one might be mistaken for the other.

Exhibit E was then offered and received in evidence, and a copy thereof is hereto attached and marked Exhibit E.

JOHN H. MULLEN was then recalled and further testified
192 as follows:

Q. I call your attention to Defendants' Exhibit 4, under date of May 17th, and to the mark A B L, which is the second mark on that sheet. Tell me what tally-sheets of brails of logs those marks were contained in, or tell me what tally-sheets they were contained in, if you can.

A. The tally-sheets of that date; I cannot give you the number of the tally-sheets from any record of it; the tally-sheets that are made up every day. The days' works were put together and dated, and there is no doubt but that the tally-sheets of that date will show that mark. They must do it, because that is where it comes from. I can't tell from memory, of course. The only answer I can give you is that it will be found among the tally-sheets of that date. The tally-sheets were made up from the number of the brails, and the bill gives the brail numbers and the stamp, and gives the date. Each tally-sheet shows the number of the brails that it was made from. I don't know how the tally-sheets are filed in my office, whether by the date or the number of the brail. I think Mr. Cronk knows.

CHARLES W. CRONK was then called by the plaintiffs in rebuttal and testified as follows:

I reside at St. Paul. I was employed by Mr. Mullen during the summer of 1893. In the first place, I was in the office in a general way, adding up sheets and correcting sheets. About the 20th of June I took charge of his office. I did not make the scale bill, Exhibit 4, or the May scale bill. I did not have anything to do at that time with making out the scale bill and getting the marks of the logs put down there. I was simply helping Mr. Johnson, who had charge at the time. I can tell so you can find out where
193 the tally-sheets of brails of logs which are shown on this sheet and marked A B L, 695 logs and 195,700 feet, are contained. If you get the tally-sheets at that date, you will find the

mark on the tally-sheet. They were put there together in a gathering sheet. The gathering sheet does not show the number of the brail. It shows the log mark and number of feet and the number of logs. It shows the date, I think. The tally-sheets are filed by the date and by the number of the brails. They are filed by order of number, so in order to find out these tally-sheets it would be necessary to examine all of the tally-sheets that are in the office. That would be the only way you would be certain, by examining the tally-sheets in the office; that is the only way you can get at it.

HUGH STEWART was then recalled by the plaintiff, and testified in rebuttal as follows:

I was employed all the time that the assorting and booming of logs was carried on at West Newton in the office, in charge of the log books, and before that time I was employed on the other side of the river in the same capacity. My duties required me to become familiar with all of the marks that came through these booms in different years, and I am familiar with them.

The witness was then shown the paper marked Plaintiff's Exhibit F, a copy of which is hereto attached, and he testified:

I made out that paper. I got these dates and marks and the number of logs and the number of feet out of the May and June scale bills of the surveyor general—that is, Defendants' Exhibits 3 and 4 here. In the performance of my duties I saw every year all of the marks of the logs that were turned into the office by the various scalers.

Q. Did you ever see any of the marks that are on this
194 Exhibit F?

The defendant objected to the question as immaterial and incompetent.

The COURT: What is the object of the testimony?

PLAINTIFF'S COUNSEL: The purpose of the testimony is to show by this witness and others that these scale bills so far as they relate to these logs, which amount to a million feet, are not only incorrect, but they represent logs that did not go in there at all. There is no such mark of logs going through there.

The court then sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiffs then offered to show by the witness that during all the time which he has been employed in the office of the West Newton booms he never saw any of the log marks set forth in Plaintiff's Exhibit F; this testimony to be followed by the evidence of the scalers for the Chippewa Logging Company that the logs were not in fact in the brails of logs in which they may appear to be by the tally-sheets in the surveyor general's office, and by the evidence of the men who had charge of the catch-marking of the logs, showing that these marks were marks that were not known at those booms, and that it was the duty of more than thirty men, if any such marks came to him, to tie it up with a line and hold it until his attention was called to it to give directions where it should go.

The defendant objected to the testimony so offered as immaterial and incompetent, and the court sustained the objection; to which order and ruling plaintiff duly excepted.

Q. It appears from the tally-sheets offered in evidence in this case that there was in brail No. 1637 one log marked Z M Z. You will state whether or not that log was a stray log, as has been defined by Mr. Douglas here.

195 A. It was. That log and other stray logs like it was accounted for to the real owners as follows:

The log is posted to the mark; the owner gets credit for it that way. It is entered up to his credit in the fall and a statement sent to him, and a settlement made if the balance is in his favor or against him.

Q. Is there or has there been any attempt made on the part of owners of these stray logs to follow the logs themselves and take them out of the brails where they happen to be?

The defendants objected to the question as immaterial, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

Plaintiff then called HENRY PHITTS, who testified as follows:

I live in St. Paul; I am working for the St. Paul Boom Company. I was working at the West Newton boom in the summer of 1893, looking after the sorting, looking after the sorters. I used to look after the logs and see that they marked them right and that they went into the right places. I had to tell the men engaged in the catch-marking what to put on them and what bark marks to put on. I gave the same instructions to the men that were stationed at the various gaps to look all the logs over and see that they were properly sorted.

There must be upwards of thirty different men stationed at these gaps to perform the same duties. If a log came to one of these sorters with a mark on it that we have not given here and one that he is not familiar with he tied it up until I came along. I was there during the entire season performing the same duties all the time, and I had performed these duties before that. I could

196 not tell you how many years I started before 1889. I had been performing those duties ever since the starting of the boom at West Newton, with the exception of the first year.

Q. I show you Plaintiff's Exhibit F and ask you to look at the marks upon that exhibit and see whether you ever saw any of them before.

Defendant objected to the question, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

Plaintiff then offered to show by this witness that he never saw any of the marks on this Exhibit F, and that it would be impossible for the number of logs which is said to have been marked with these marks, which number exceeds a hundred, to have passed through this boom on any one day (as it appears from these scale bills offered in evidence that they did do) without the attention of

this witness being called to it, and that they did not in fact pass through there.

Defendant- objected to the question as immaterial and incompetent, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then called JAMES C. DALY in rebuttal, who testified as follows:

I reside in Bayfield county and have for two years. Prior to that I resided at Eau Claire, Wisconsin. At present I am a police officer and deputy sheriff of that county. I have done work in scaling logs for about twenty years. I worked down at the booms above the West Newton slough in the summer of 1893. I was employed by the defendant Mullen. My contract was to have charge, manager, and overseer of the scaling of the logs. I had the general charge and oversight over the deputies who did the scaling—that is,
197 I did the scaling on the outside and paid no attention to the office.

Q. Were the men who were employed under your supervision there men who had ever worked at scaling logs at West Newton or Beef slough?

The defendant- objected to the question as immaterial.

The COURT: How is that material?

PLAINTIFF'S COUNSEL: I think it will become material by showing that they were not, with some few exceptions, and we expect to show that it is impossible for a man who was not familiar with that work and with the marks there to make a correct scale of logs.

The court then sustained the objection; to which ruling and order plaintiff duly excepted.

Plaintiff then offered to show by this witness that there were over thirty scalers employed by the defendant to do the scaling at West Newton during the summer of 1893 and half as many tallymen, and that all the tallymen, with the exception of six, and all of the scalers were men who were inexperienced and had never had any experience in scaling logs at the West Newton booms, and that by reason of the great number of marks that are rafted together for the Chippewa Logging Company and the Mississippi River Logging Company it is impossible for an inexperienced scaler with an inexperienced tallyman to make any correct scale and return of the logs and the marks thereon, and that, as a matter of fact, the scales or pretended scales made there by the surveyor general's deputies were grossly inaccurate.

The defendant- objected to the testimony so offered as immaterial and incompetent, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The witness then further testified:

I have scaled there for a number of years. I also scaled the same class of logs on the other side of the river, at Beef slough.
198 I scaled a number of years on the other side, and one year at Beef slough, so I am familiar with the method of doing the work and the class of work to be done.

The plaintiff then renewed the offer above set forth, and the defendants again objected to the testimony so offered, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiff then called F. B. YATES in rebuttal, who testified:

I live at Stillwater. I am a deputy of the surveyor general there; have occupied that position ten years; have in my possession all the records of that office at Stillwater. I recently made an examination of the records of the log marks in that office.

The witness was then shown a paper marked Plaintiff's Exhibit G, and testified:

I have made an examination of these records for the purpose of ascertaining whether any of the log marks on that exhibit is recorded in that office. I find only two marks of the marks shown on that exhibit recorded there since 1885. My examination does not go further back than that, and the two marks I find recorded I have placed a memorandum about them on the sheet itself.

The plaintiff then offered in evidence Exhibit G, which was received, and a copy thereof is hereto attached.

Plaintiff then offered in evidence two papers marked respectively Exhibit H and Exhibit I. The same *was* received in evidence, and copies thereof are hereto attached, marked respectively Exhibits H and I.

JOHN H. MULLEN was then recalled and cross-examined by counsel for defendant-, and testified as follows:

199 I did not turn over the records of my office to my successor. I have always retained them as far as I could in my possession until they made an application for them and called upon me for them.

Counsel for the plaintiff then stated:

It has been suggested that your honor could not have understood that the various marks of logs with the number of logs and number of feet that are set down on Plaintiff's Exhibit F, to which I called the attention of our witnesses, were taken from the scale bills which were offered in evidence by the defendant. I supposed that was made clear to the court.

The COURT: Yes; I do so understand it.

The plaintiff then called COLIN MCMILLAN in rebuttal, who testified as follows:

I live at Chippewa Falls and have for seventeen years. I was one of the deputies of the surveyor general, Mr. Mullen, who did the scaling in the summer of 1893 for that office. I had charge of the men who were doing that work part of the time. The crew that I had charge of was scaling what we understood to be outside logs that did not belong to the company. I scaled some of the logs myself, and had general supervision of the other men.

Q. State whether any of the men under you in scaling these logs scaled all logs twenty-four feet and over in length as two logs.

The defendant- objected to the question as immaterial and in-

competent, and the court sustained the objection; to which ruling and order plaintiff duly excepted.

Plaintiff then recalled HUGH STEWART and asked the following question:

200 Have you made a computation for the purpose of being able to testify what proportion of the logs that came through the West Newton boom in the summer of 1893 and the years prior thereto belonged to parties who resided outside of either the State of Minnesota or Wisconsin?

The defendant- objected as immaterial.

The COURT: How is that material?

PLAINTIFF'S COUNSEL: It is material as tending to show the character of the business carried on there—that it was purely and entirely interstate commerce.

The court then sustained the objection; to which ruling and order plaintiff duly excepted.

Q. Have you made a computation so that you can testify as to the amount of logs that were rafted and scaled through the West Newton boom in the summer of 1893 that were not claimed by anybody and that you had no means of knowing to whom they did belong?

The defendant- objected to the question as immaterial.

The court asked: How is that material?

Plaintiff's counsel stated: It is material in this way: We expect to show by this witness that out of 500,000,000 feet of logs that came through that summer that all of the logs except 120,000 belonged to parties that were engaged in logging on the Chippewa river.

The court then sustained the objection; to which ruling and order plaintiff duly excepted.

Q. I think you have already testified that what are known as pick-up logs are logs that are picked up along the river below the West Newton booms?

A. Yes, sir.

Q. Can you tell how many logs other than those that were recognized as belonging to parties engaged in logging on the Chippewa river were picked up and scaled by the Mississippi River

201 Logging Company between these West Newton booms and La Crosse during the summer of 1893?

The defendant- objected to this question as immaterial.

The plaintiff's counsel stated: We think it is material upon this proposition. We have claimed and shall claim that substantially all logs, if not quite all of them (the amount is impossible to determine), that go into the West Newton booms that do not come from the Chippewa river are logs that escape from rafts while passing down the river from Lake Pepin to the upper limits of the West Newton boom, and this testimony is offered for the purpose of substantiating that claim, by showing that the proportion of that class of logs that are found below West Newton is larger, in about the

same proportion, with those that come into or are rafted out of those booms, and that the difference between these two amounts is substantially like the difference between the mileage of the river from Lake Pepin to the West Newton booms and from the West Newton booms to La Crosse. This testimony is offered for that purpose.

The court sustained the objection; to which ruling and order plaintiff duly excepted.

The plaintiffs then rested their case in rebuttal.

The defendants then offered in evidence two pages of the book which had been marked Plaintiff's Exhibit D, and which were marked A and B.

The plaintiff objected to these two pages as immaterial and incompetent, because there is nothing in these two sheets which are offered in evidence which the law authorizes or requires the surveyor general to record, and the original papers have already
202 been offered in evidence and are attached to Defendants' Exhibit 3; also for the reason that they form no part of the scale bills; also for the reason that there is no provision for recording such a paper, and the paper now offered in evidence is not in any sense a record.

But the court overruled the objection and received the papers in evidence, and copies of the same are hereto attached and marked, respectively, A 1 and B 1; to which ruling and order plaintiff then and there duly excepted.

No further evidence was offered by defendants.

Thereupon it was stipulated in open court, by and between counsel for the respective parties, that such of the private and local laws or special laws of the State or Territory of Minnesota as either party might desire to call the attention of the court to should be considered in evidence and might be read to the court and commented upon with the same force and effect as if formally offered in evidence and made a part of the record.

Counsel for the plaintiff called the attention of the court to the following special laws of the State of Minnesota:

The charter of the Mississippi Boom Company, which is chapter 18 of the Compilation of the Laws of 1851–1854.

Charter of the St. Croix Boom Company, which is chapter 29 of the Private Laws of 1851.

Charter of the St. Anthony Boom Company, which is chapter 51 of the Laws of 1852.

Charter of the St. Croix Boom Corporation, which is chapter 141 of the Laws of 1856.

Charter of the Mississippi & Rum River Boom Company, which is chapter 56 of the Laws of 1857.

Thereupon the plaintiff requested the court to make cer-
203 tain declarations of the law, as follows:

First. That it has not been shown that the logs for which defendant- claims fees for scaling in this case ever ran into or through any boom chartered by law, and therefore the defendants have no right to the fees claimed or to any lien on the plaintiff's logs therefor.

But the court refused to make such declaration; to which ruling and order the plaintiff then and there duly excepted.

Second. That the defendants have not shown themselves entitled to any lien upon the plaintiff's logs:

a. Because the scale bills, Defendants' Exhibits 3 and 4, are not evidence of the scaling of the logs therein described.

b. Because it appears affirmatively that the said scale bills were not, nor were either of them, recorded in any book in the office of the surveyor general of that district.

c. Because it appears that a very great proportion of the logs mentioned in these scale bills, Defendants' Exhibits 3 and 4, were not the plaintiff's logs, and that the work done was not done at the request of the plaintiff or anybody else.

d. Because the pretended records of said scale bills were not in fact any record whatever.

e. Because it does not appear that any of the log marks shown on defendants' scale bills, Exhibits 3 and 4, were ever recorded in the office of the surveyor general of logs and lumber of the 4th lumber district of the State of Minnesota, in accordance with the provisions of title 3, of chapter 32, General Statutes of the State of Minnesota.

But the court refused to make such declaration; to which ruling and order the plaintiff duly excepted.

Third. That the statute under which the defendants claim a right to scale these logs and recover fees therefor, and to a lien on the plaintiff's logs therefor, is, as applied to the place and business where this scaling was done, an attempted regulation by the State of interstate commerce and is unconstitutional and void, being in contravention of subdivision 4, of section 8, of article 1, of the Constitution of the United States.

204 But the court refused to make such declaration; to which ruling the plaintiff then and there duly excepted.

And because the matters above set forth do not appear of record in this cause the plaintiff prays that the foregoing bill of exceptions may be allowed and settled.

THOMAS SIMPSON,
CLAPP & MACARTNEY,
Plaintiff's Attorneys.

The above and foregoing bill of exceptions is correct and we consent that it may be settled.

Dated Dec. 21, 1897.

THOMAS SIMPSON,
CLAPP & MACARTNEY,
Plaintiff's Attorneys.
H. W. CHILDS,
WARNER, RICHARDSON & LAWRENCE,
Att'ys for Defendants.

The above and foregoing bill of exceptions and the exhibits thereto attached and therein referred to having been examined by me and found to conform to the truth, and the parties having agreed thereto, the same is now signed and settled by me as and for the bill of exceptions in said cause.

Dated Dec. 22, A. D. 1897.

WM. LOCHREN,
District Judge.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

206 DEFENDANTS' EXHIBIT 1.

Articles of Incorporation of the Minnesota Boom Company.

For the purpose of organizing a corporation under the laws of the State of Minnesota, we the undersigned, do hereby associate ourselves as a corporation and adopt the following articles of incorporation.

Article 1.

The name of this corporation shall be the "Minnesota Boom Company." The general nature of the corporate business shall be the construction, maintenance and use of booms, dams, and all other structures of any kind necessary or advantageous for the performance of the logging and lumbering business hereinafter described, upon the Mississippi river, or either bank thereof, between the mouth of the Chippewa river, or a point opposite thereto, and the point where the easterly boundary line of the city of Winona, meets the Mississippi river or a point opposite thereto, and also upon, or on any side or bank of, any slough, bayou, branch or part of the Mississippi river between or connecting with said river at any point between the extreme limits aforesaid. The business of the corporation beside the construction, maintenance and operation of said structures shall be gathering, driving, booming, storing, assorting, rafting, brailing, and otherwise handling any and all logs, lumber and timber of any kind, between the limits and upon the waters and territory above stated, for any and all persons having any logs, lumber or timber upon any of said waters or within said territory, and this corporation shall have the right to charge and receive, and shall charge and receive, from any and all persons upon or in connection with those logs, lumber or timber—any work or services *are* done by this corporation, a proper sum and compensation by it to be fixed for such work or services, and this corporation shall also do any other business incident to any part of the general business aforesaid.

207 The principal place of business of the corporation shall be the city of Winona, Winona county, Minnesota.

Article II.

The time of commencement of this corporation shall be April 16th, 1889, and it shall continue thirty years.

Article III.

The amount of the capital stock of this corporation shall be one hundred thousand dollars ($100,000) and it shall be paid in at the time and in the amounts and manner prescribed by the board of directors. Such capital stock shall be divided into one thousand shares of one hundred dollars ($100) each.

Article IV.

The highest amount of indebtedness or liability to which said corporation shall at any time be subject is fifty thousand dollars ($50,000).

Article V.

The names of the persons forming this corporation are: William H. Laird, A. F. Hodgins, A. B. Youmans, James L. Norton, Andrew Hamilton and William Hayes. All of said corporators reside at the city of Winona, Minnesota.

Article VI.

The government of said corporation and the management of its affairs shall be vested in a board of five directors, who shall be stockholders, and the corporate officers shall be a president, vice-president, secretary and treasurer, who shall be elected by the directors from their number. Said directors and officers shall hold their offices for one year and until their successors are elected and qualify. The board of directors shall have authority to adopt suitable by-laws for the government of the corporation. The annual meeting of the stockholders of this corporation shall be held on the fourth Tuesday of May in each year and at this meeting the directors shall be elected. At their first meeting after such annual meeting of
208 stockholders, the directors shall annually elect the corporate officers.

The first directors of the corporation shall be William H. Laird, A. F. Hodgins, A. B. Youmans, James L. Norton and William Hayes. The first officers shall be: William H. Laird, president, A. B. Youmans, vice-president, William Hayes, secretary, and A. F. Hodgins, treasurer. These first officers and directors shall hold office until the annual meeting of stockholders in May, 1889, and until their successors are elected and qualify.

In witness whereof, we have hereunto set our hands and seals at the city of Winona, Minnesota, on this 5th day of April, 1889.

WM. H. LAIRD. [SEAL.]
A. F. HODGINS. [SEAL.]
A. B. YOUMANS. [SEAL.]
JAMES L. NORTON. [SEAL.]
ANDREW HAMILTON. [SEAL.]
WM. HAYES. [SEAL.]

Signed, sealed and delivered in presence of—
LLOYD W. BOWERS.
B. F. HOUSTON, JR.

STATE OF MINNESOTA, } ss:
County of Winona, }

On this 5th day of April, 1889, before me personally came William H. Laird, A. F. Hodgins, A. B. Youmans, James L. Norton, Andrew Hamilton, and William Hayes, to me personally known and known to be the persons described in and who executed the foregoing instrument, and they then and there severally acknowledged that they executed said instrument as their free act and deed.

B. F. HOUSTON, JR.,
[NOTARIAL SEAL.] *Notary Public, Winona County, Minnesota.*

Filed in this office for record April 6th, A. D. 1889, at 12 o'clock m.
H. MATTSON,
Secretary of State.

STATE OF MINNESOTA, }
Department of State. }

209 I, Albert Berg, secretary of state of the State of Minnesota, do hereby certify that I have compared the annexed copy with record of the original instrument in my office of articles of incorporation of the "Minnesota Boom Company" as filed April 6th, 1889, and recorded in Book "W" of Incorporations, page 447, and that said copy is a true and correct transcript of said record, of said original, and of the whole thereof.

The Great Seal of the State of Minnesota.

In testimony whereof I have hereunto set my hand and affixed the great seal of the State, at the capitol, in St. Paul, this 10th day of August, A. D. eighteen hundred and ninety-seven.

ALBERT BERG,
Secretary of State.

210 DEFENDANTS' EXHIBIT 2.

THE STATE OF MINNESOTA, EXECUTIVE DEPARTMENT.

Knute Nelson, governor of said State, to John H. Mullen, of Wabasha county, sends greeting:

Reposing especial trust and confidence in your prudence, integrity, and ability, I have appointed you, the said John H. Mullen, as surveyor general of logs and lumber for the fourth lumber district for the full term of two years. You are therefore by these presents appointed and commissioned surveyor general of logs and lumber, as aforesaid, to have and to hold the said office of surveyor general of logs and lumber, together with all the rights, powers, and emoluments to the said office belonging or by law in anywise appertaining, until this commission shall be by me or other lawful authority superseded or annulled or expire by force or reason of any law of this State.

In testimony whereof I have hereunto set my name and caused the great seal of the State of Minnesota to be affixed at the capitol, in the city of St. Paul, this twelfth day of April, in the year of our Lord one thousand eight hundred and ninety-three, and of the State the thirty-fifth.

KNUTE NELSON.

By the governor:
F. P. BROWN,
Secretary of State.

[Great Seal of Minnesota.]

211 A. J. Allison, county auditor, Wabasha county.

WABASHA, MINN., *Aug. 10th*, 1897.

I, A. J. Allis*t*on, county auditor of Wabasha county, State of Minnesota, do hereby certify that the attached bond of J. H. Mullen

and oath is a correct copy as filed in my office the 17th day of April, 1893.

A. J. ALLISON,
County Auditor, Wabasha County.

[Seal of County Auditor.]

212 STATE OF MINNESOTA, } ss:
County of Wabasha, }

I, John H. Mullen, of the city and county of Wabasha, State aforesaid, do solemnly swear that I will faithfully discharge the duties of surveyor general of logs and lumber for the fourth district of Minnesota, to which I have been appointed, to the best of my ability and in accordance with law, so help me God.

JOHN H. MULLEN.

Subscribed and sworn to before me this 17th day of April, 1893.

L. WHITMORE,
[NOTARIAL SEAL.] *Notary Public, Wabasha Co., Minn'a.*

Know all men by these presents that we, John H. Mullen, as principal, and C. C. Hirschy, L. Whitmore, Jacob Tenney, Alice G. Lawrence, Samuel Hirschy, Malcolm Kennedy, as sureties, all of the city and county of Wabasha, State of Minnesota, are held and firmly bound unto the Board of County Commissioners of the County of Wabasha, State of Minnesota, in the sum of five thousand dollars, lawful money of the United States; to the payment of which to the said Board of County Commissioners, their successors or assigns, we hereby jointly and severally bind ourselves, our heirs, executors, and administrators.

Whereas the said John H. Mullen, the principal, was, on the 12th day of April, A. D. 1893, appointed surveyor general of logs and lumber for the fourth lumber district of Minnesota and duly confirmed as such:

Now, therefore, the conditions of this obligation are such that if the said John H. Mullen shall faithfully discharge his duties as such surveyor general and deliver over to his successor all bills, bonds, certificates, and papers, and other effects pertaining to said office, then and in that case this obligation shall be null and void; otherwise to remain in full force and virtue.

213 In witness whereof we have hereunto set our hands and seals this seventeenth day of April, A. D. 1893.

JOHN H. MULLEN.	[SEAL.]
C. C. HIRSCHY.	[SEAL.]
JACOB TENNEY.	[SEAL.]
L. WHITMORE.	[SEAL.]
ALICE G. LAWRENCE.	[SEAL.]
SAMUEL HIRSCHY.	[SEAL.]
MALCOLM KENNEDY.	[SEAL.]

In presence of—
JAS. G. LAWRENCE.
J. G. DILL.

STATE OF MINNESOTA, } ss:
County of Wabasha, }

On the 17th day of April, A. D. 1893, before me personally appeared John H. Mullen, C. C. Hirschy, Jacob Tenney, L. Whitmore, Samuel Hirschy, Alice G. Lawrence, and Malcolm Kennedy, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

JOHN N. MURDOCH,
[NOTARIAL SEAL.] *Notary Public, Wabasha Co.*

STATE OF MINNESOTA, } ss:
County of Wabasha, }

C. C. Hirschy, Jacob Tenney, L. Whitmore, Samuel Hirschy, and Malcolm Kennedy, being duly sworn, says, each for himself, that he is one of the sureties above named; that he is a resident and freeholder of the State of Minnesota and worth the amount of one thousand dollars, being one-fifth of the sum specified in the foregoing bond, above his debts and liabilities and exclusive of his property exempt from execution.

C. C. HIRSCHY.
JACOB TENNEY.
L. WHITMORE.
SAMUEL HIRSCHY.
MALCOLM KENNEDY.

Subscribed and sworn to before me this 17th day of April, 1893.

JOHN N. MURDOCH,
[NOTARIAL SEAL.] *Notary Public.*

214 Alice G. Lawrence, being duly sworn, says for herself that she is one of the sureties above named; that she is a resident and freeholder of the State of Minnesota and worth the amount of one thousand dollars, being one-fifth of the sum specified in the foregoing bond, above her debts and liabilities and exclusive of her property exempt from execution.

ALICE G. LAWRENCE.

Sworn to — me this 17th day of April, 1893.

JAMES G. LAWRENCE,
[NOTARIAL SEAL.] *Notary Public.*

(Endorsed:) Received and filed April 17, 1893. M. J. O'Laughlin, county auditor.

We hereby approve the within bond and sureties.

ANSON PIERCE,
JACOB TENNEY,
T. P. NEPPER,
JAMES McGINN,
Co. Commissioners of Wabasha County.

Attest: M. J. O'LAUGHLIN, *Co. Aud.*

215 DEFENDANTS' EXHIBIT 3.

WABASHA, *July 3rd*, 1893.

The Minnesota Boom Company Dr. to John H. Mullen, surveyor general of logs & lumber, 4th district, State of Minnesota.

To surveying 183,062,290 feet, in logs, at West Newton boom, for the month ending June 30th, 1893, the same being statutory fee therefor at the rate of 5c. per thousand..... $9,153.10

STATE OF MINNESOTA, } ss:
County of Wabasha, }

The surveyor general of logs & lumber for the fourth district of Minnesota hereby certifies:

That all the logs mentioned in the scale bill hereto affixed ran out of the Minnesota Boom Company during the month of June, 1893.

That he duly surveyed all said logs running out of said boom during said month.

That the true aggregate amount due to him for his said survey and upon said scale bill is the sum of $9,153.10.

That he has said lien upon said logs and on the marks thereof mentioned in said scale bill respectively at the rate of five cents per thousand feet for each thousand feet of said logs.

That he has surveyed and scaled said logs relying upon and in reliance on his said lien.

That he hereby claims a lien on said logs, scale bill, and log marks for said aggregate sum of $9,153.10, and on each one of said log marks respectively for five cents per thousand feet for each thousand feet of logs bearing such mark that was so surveyed during said month.

[Seal Surveyor Gen'l, 4th Dist., Minn.]

JOHN H. MULLEN,
Surveyor Gen. L. & L., 4th Dist., Minn.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

220

220-222

Defendant's Exhibit 3 cont'd. (Sheet 33)

SURVEYOR GENERAL'S OFFICE.

Wabasha, Minn., June 12th 1893.

Bill of Pine Logs scaled to the mark for the Minnesota Boom Company during the month of June A. D. 189 , at West Newton Boom. June 12 1893. SCALED BY J. H. MULLEN AND DEPUTIES.

Date.	Marks.	Logs.	Feet.	Date.	Marks.	Logs.	Feet.
	Bt.Forwd.	532,342	72,945,650		Bt.Forwd.		
June 12/93	Y ⌀ B	33	5,270				
	Y A	10	2,060				
	Y U	66	7,360				
	Y 7	63	7,970				
	Y ⌀	14	1,580				
	Y E ϟ	1,044	119,210				
	Y ⌇ Z	430	61,550				
	Y V	40	6,180				
	Y △	18	2,690				
	K X M	1	140				
	◈	1	80				
	Y ϟ L	1	140				
	Y P J	2	360				
	⌀	1	60				
	J X A	5	1,850				
	◈ st	1	50				
	⌇ 7 ⌇	78	13,600				
	⌇ ⌇	1	400				
	~~Z~~ ~~W~~	4	240				
	Z ◊ H	9	950				
	Forwd.						

Ford	534,164	73,177,190	
Total		Forwd	

Surveyor General Fourth District Minnesota,
By _____ Deputy.

220

Defendants Exhibit 3 cont'd. Sheet 45

SURVEYOR GENERAL'S OFFICE.

Wabasha, Minn., June 14,1893.

Bill of Pine Logs scaled to the mark for the Minnesota Boom Company during the month of June A D, 1893, at West Newton Boom.

SCALED BY J. H. MULLEN AND DEPUTIES.

Date.	Marks.	Logs.	Feet.	Date.	Marks.	Logs.	Feet
	Bt. Forwd.	629,639	86,336,020		Bt Forwd.		
June 14/93	Y E ϟ	1,247	122,770	June 14/93			
	ψ	2	310				
	ϟ ϟ	13	1,210				
	Y P J	7	340				
	X N L X	1	190				
	Y A	8	1,740				
	Y ✱ ◇	2	320				
	; E !	74	18,200				
	Z ψ	49	4,790				
	Z N Σ	3	260				
	K I M	1	90				
	Forwd.	630,946	86,483,230				
	Total		Forwd.				

Surveyor General Fourth District, Minnesota.

By _____ Deputy.

224

Defendants Exhibit 3 cont'd. Sheet 43.

SURVEYOR GENERAL'S OFFICE.

Wabasha, Minn., June 15th 1893.

Bill of Pine Logs scaled to the mark for the Minnesota Boom Company during the month of June A. D. 1893, at West Newton Boom.

June 15 1893. SCALED BY J. H. MULLEN AND DEPUTIES.

Date.	Marks.	Logs.	Feet.	Date.	Marks.	Logs.	Feet.
	Bt Forwd	675,611	92,501,150				
					Bt Forwd.		
June 15/93		1	550				
		14	2,340				
		1	30				
		1	40				
		5	410				
		1	20				
		28	2,910				
		1	80				
		1	00				
		1	90				
		30	5,770				
		48	4,660				
		1	80				
		39	6,280				
		1,699	274,210				
		4	820				
		1	90				
		4	550				
		12	1,110				
		1	60				
		1	20				
		2	430				
		5	830				
		5	580				
		435	61,760				
		867	136,550				
		157	18,400				
		358	44,420				
		9	3,700				
		2	140				
		2	160				
		440	70,800				
		340	48,310				
		315	49,390				
		34	5,180				
		557	71,510				
		1,380	190,600				
		2	220				
	Forwd	682,505	93,504,240				
	Total				Forwd.		

Surveyor General Fourth District, Minnesota.

By _____ Deputy.

225

Defendants Exhibit 3 cont'd. (Sheet 60)

SURVEYOR GENERAL'S OFFICE.

Wabasha, Minn., June 22, 1893.

Bill of Pine Logs scaled to the mark for the Minnesota Boom Company during themonth of June A. D. 1893, at West Newton Boom.

SCALED BY J. H. MULLEN AND DEPUTIES.

Date.	Marks.	Logs.	Feet.	Date	Marks.	Logs.	Feet.
	Bt.Forwd	969,909	140,210,290	By Forwd.			
June 22/93	8 7	166	21,650	June 22/93			
	⌐ ⌐	794	83,690				
	⌐	78	8,210				
	⌐	11	1,190				
	⌐	25	2,210				
	7 4 7	525	83,140				
	7 1 0	345	46,590				
	0 / 0	915	142,110				
	⌐ 0 ⌐	341	46,260				

Forwd	973,109	140,638,540
Total		Forwd

Surveyor General Fourth District, Minnesota.

By _____ Deputy.

229

Defendants Exhibit 4.

SURVEYOR GENERAL'S OFFICE.

Wabasha, Minn., May 15, 1893.

Bill of Pine Logs scaled to the mark for the Minnesota Boom Company from 4s May 15, A D. 1893, at and below West Newton Boom.

SCALED BY J. H. MULLEN AND DEPUTIES.

Mark recorded to at Date of Sale.	Marks.	No. logs.	Feet.
	N V X'	6	940
	A / X /	2	520
	B A N	10	2,100
	X H. X	1,428	247,350
	C U D	191	18,580
	/ x /	1,944	252,880
	X T	102	20,900
	X / 4 X	2	500
	X T X	4	1,140
	X V / /	5	700
	V T	199	37,640
	E W	168	25,910
	E L M	2	790
	E S A	8	1,010
	F D F	24	7,160
	L W	85	16,000
	/	1	160
	H	304	44,200
	H X N /	1	240
	K Y E	1,037	159,010
	K A N	1	140
	L N L	27	3,760
	L	1	050
	L U K	1	050
	L E	1	160
	L U M	3	810
	L O	1	180
	N	1	050
	N ' N	1	060
	N O N	1	200
	N x N	4	1,180
	N	1	060
	N / P	1	110
	P	372	45,100
	P E N	5	630
	R U M	1	160
	S A M	895	149,260
	S E x	1	060
	S N S	4	530
	S J	5	930
	/	79	10,770
	T S U	4	510
	T C T	4	920
	U S A	39	4,030
	V H	1	080
Total		6,977	1,083,500

Surveying $52.67

J.H.Mullen,
Surveyor General Fourth District, Minnesota.
By Johnson, Deputy.

232

Defendant Exhibit 4 continued.

SURVEYOR GENERAL'S OFFICE, Minn., 189

Bill of Pine Logs scaled to the Mark for the Minnesota Boom Company, from to A. D. 189

at and below West Newton Boom.

SCALED BY J. H. MULLEN AND DEPUTIES.

Mark Recorded to at Date of Sale.	Marks.	No. Logs.	Feet.
		49,025	7,839,110
	(W D) st.	1	180
	Y	19	2,430
	Y Y	27	2,380
	Y / A	56	9,400
	Y /	93	11,570
	Y / L	56	7?040
	Y / E	3,545	730,790
	Y T x	1	. 230
	Y E	1,092	125,990
	Y L A	3	310
	Y N T	2	180
	Y /	4	1,340
	Y / '	1	180
	Y X Y	1	580
	/	1	710
	2 / A	1	110
	..Z..	3	460
	2 P	269	40,720
Total,		54,200	8,773,710

J. H. Mullen,
Surveyor General Fourth District, Minnesota.

Surveying $438.68

By Johnson, Deputy.

233

Defendant Exhibit 4 concluded.

SURVEYOR GENERAL'S OFFICE.

Wabasha, Minn., 189

Bill of Pine Logs scaled to the mark for the MinnesotaBoom Company, from to A. D. 189

at and below West Newton Boom. Recapitulation Sheet.

SCALED BY J. H. MULLEN AND DEPUTIES.

Mark recorded to at Date of Sale.	Date.	No.Logs.	Feet.	$
	1893.			
May	15th.	6,977	1,053,500	52.67
"	16th.	15,492	2,335,350	116.77
"	17th.	15,699	2,596,480	129.82
"	18th.	9,695	1,554,560	77.73
"	19th.	19,605	3,098,300	154.91
"	20th.	2,029	347,360	17.37
"	22d.	19,550	2,881,370	144.07
"	23d.	20,795	3,048,770	152.44
"	24th.	9,541	1,413.030	70.65
"	29th.	32,715	4,433,130	221.66
"	30th	48,398	7,180,950	359.05
"	31st.	34,200	8,773,710	438.68
		254,996	38,716,510	1,935.82

Total.

Surveyor General Fourth District, Minnesota.

Surveying $ _____ By _____ Deputy.

Exhibit 4 concl'd.

State of Minnesota.)
(ss.
County of Wabasha.)

The Surveyor General of logs and lumber for the Courth District of Minnesota, hereby certifies:

That all the logs mentioned in the scale bill hereto affixed, ran out of the boom of the Minnesota Boom Company, during the month of May A. D. 1893.

That he duly surveyed all said logs running out of said boom during said month.

That the true aggregate amount due to him for his said survey and upon said scale bill, is the sum of $1935.82.

That he has said lien on said logs and on the marks thereof mentioned in said scale bill, respectively at the rate of Five cents perthousand feet for each thousand feet of said logs.

That he has surveyed and scaled said logs relying upon and in reliance on his said lien.

That he hereby claims a lien on said logs, scale bill and log marks for said aggregate sum of $1935.82 and on each one of said log marks severally for Five cents per thousand feet for each thousand feet of logs bearing such mark that was so surveyed during said month.

J. H. Mullen,

Surveyor Genl.4th Dist.

(Seal Surveyor General 4th Dist.) Minn.

Received

Jun 16 1893

Answered .

2315

3080
133

Defendant's Exhibit 8.

To the Minnesota Boom Company, the Managing Agent thereof, and whomsoever it may concern:

You and each of you are hereby notified that the undersigned, the Surveyor General of logs, lumber and timber of and for the Fourth District of the State of Minnesota, has seized and taken actual possession of all the saw logs contained in the fourteen brails of logs numbered as follows, that is to say: 2470, 2387, 2407, 1637, 2304, 2444, 2469, 2306, 2226, 2222, 2272, 2406, 2310, 2229, which said brails of logs are now located along the west or Minnesota shore of the Mississippi River immediately above the Village of Minneiska in Wabasha County in said state, and the saw logs in which said brails bear the log marks and contain the number of feet board measure of each log mark expressed and set forth in Exhibit "A" hereof.

You and each of you are hereby further notified that said seizure has been made and possession taken by said Surveyor General to enforce payment of certain fees of said Surveyor General for surveying the logs running out of the boom of the said Minnesota Boom Company during the month of June 1893, which fees amount to the sum of ninety one hundred fifty three & 1o/1oo dollars. $9153.10).

John H. Mullen.

Surveppr General of Logs, Lumber and Timber, for the Fourth District of the state of Minnesota.

Exhibit "A".

Brail No. 2306.

Log Marks.	Logs.	Quantity. Feet
[illegible]	1	300
Y : Z	15	1880
I K	23	2280
J V	5	480
[illegible]	7	310
L N L	5	740
[illegible]	6	900

236

Exhibit 5 Cont'd.

T ◇ T	2	370
T S U	2	140
T U E	1	100
S J	26	3160
Y Ψ (Stamp'	22	2210
Y E S	221	21950
ϒ V ϒ	286	21450
A	1	80
T T T	1	110
	627	56460

Brail No. 2470 Scaled June 29th 1893.

Lot Marks.	Logs.	Quantity. Feet.
F D F	4	1,370
S A M	976	135,900
	980	137,270

Brail No. 2387, Scaled June 29th 1893.

1 W A	8	860
Y ◇ A	43	6160
B Y	5	770
E E E	2	460
S A M	8	890
⟩ ⟩ ⟩	401	59,320
F E N	501	62,540
	965	130,000

Brail No. 2469. Scaled June 29th 1893.

Y E S	1029	108,660

Brail No. 2272. Scaled June 26th 1893.

F D F	7	1,730
S A M	1,045	126,510
	1,052	128,240

Exhibit 8 cont'd.

Brail No.2304. Sealed June 27th 1893.

Log Mark s.	Logs.	QuaNtity.	Feet.
1 W A	3		310
Y ◇ A	53		7080
B Y	7		1010
E E E	2		280
S A M	8		870
⟩⟩⟩	448		55,570
P E. M	533		69,200
L M	1		40
1 W A.	1		00
P D P	1		70
	1,057		134,430

Brail No. 2407. Sealed June 28th 1893.

N	1		350
P D P	12		3,820
S A M	983		133,000
	996		137,170

Brail No.2444. Sealed June 28th 1893.

Log Marks.	No. of Logs.	Quantity.	Feet
Y E S	1,044		113,280
Y P J	1		110
Total,	1,045		113,390

Brail No.2228. Sealed June 23rd 1893.

P D P	21		3,170
S A M	972		123,710
	993		126,880

Brail No. 2406. Sealed June 29th 1893.

N	1		100
H W E	2		90
M T W	1		60
J J	1		80
S A M	1		00

288

Exhibit 5 cont'd .

~~	1	180
Y ◇ A	7	860
F & +	1	160
	834	67,350

Brail No.2229. Sealed June 24th 1893.

S A M	1	500
M T W	1	30
J . J	1	180
V / "	1	100
1 N V	1	280
W M D	21	2100
N	954	102,880
	980	106,070

241 DEFENDANTS' EXHIBIT 6.

To the Minnesota Boom Company, the managing agent thereof, and whomsoever it may concern:

You and each of you are hereby notified that the undersigned, the surveyor general of logs, lumber, and timber of and for the fourth district of the State of Minnesota, has seized and taken actual possession of all the saw-logs contained in the 16 brails of logs numbered as follows—that is to say: 2470, 2387, 2407, 1637, 2304, 2444, 2469, 2306, 2228, 2222, 2272, 2406, 2310, 2229, 1030, 1945; which said brails of logs are now located along the west or Minnesota shore of the Mississippi river immediately above the village of Minneiska, in Wabasha county, in said State, and the saw-logs in which said brails bear the log mark expressed and set forth in Exhibit A" hereof.

You and each of you are hereby further notified that said seizure has been made and possession taken by said surveyor general to enforce payment of certain fees of said surveyor general for surveying the logs running out of the boom of the said Minnesota Boom Company during the month of May, 1893; which fees amount to the sum of nineteen hundred thirty-five & $\frac{82}{100}$ dollars.

JOHN H. MULLEN,
Surveyor General of Logs, Lumber, and Timber for the Fourth District of the State of Minnesota.

[Seal of Surveyor General, 4th Dist.]

(Here follows map marked page 242.)

243 DEFENDANTS' EXHIBIT 9.

Office of surveyor general logs and lumber, second district of Minnesota.

MINNEAPOLIS, MINN., *Aug.* 13, 1897.

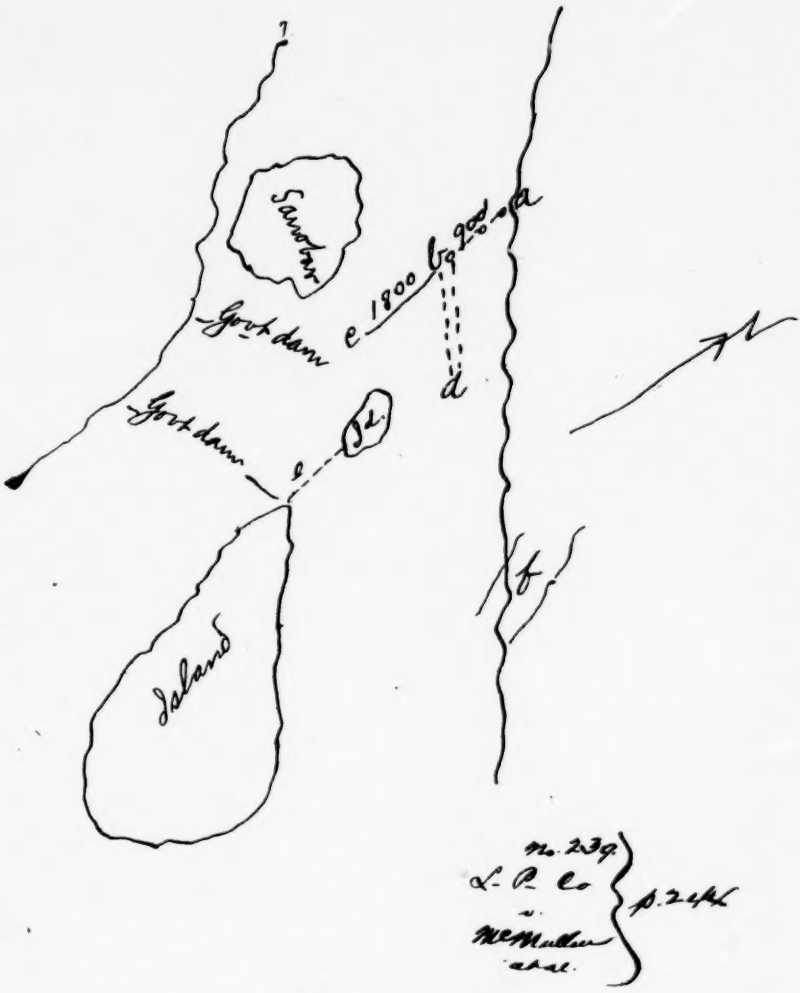
I hereby certify that the following log marks are of record in this office in name following mark and date of record shown:

B Y	N. P. Clarke & Co., May 22nd, 1890.
I W A	State of Minnesota, Sept. 25th, 1889.
Z M Z	Bovey De Laittre Lmbr. Co., Ap'l 17th, 1889.
T T T	J. S. Pillsbury, Sept. 9th, 1893.

S. S. BROWN,
Sur. Gen'l 2nd Dist.,
By SINCLAIR, *Dep'y.*

(Here follows diagram marked page 244.)

Plaintiff's Exhibit A.



244

Plaintiff's Exhibit E. 144

A S A

J E N

V l l

V XX

H A W

J N

W M W

4 7

V

S I D

Y Y F

V X X V

J A

W R

A B L

N L L

V l 4

Y Z

H V K

W E S

Plaintiff's Exhibit F.

1893.			
June 1 -	A S A-	375-	63,340
2 -	J K N -	33 -	6,400
2 -	V 1 1	857 -	124,430
3 -	V	12 -	2,090
8 -	H A W -	119 -	12, 140
22 -	J N -	2789 -	344,950
" -	W N W -	124 -	16,430
23 -	4 7	11 -	1,090
" -	V	41 -	4,010
24 -	S I D	127 -	17,540
" -	Y Y P	26 -	2,530
" -	Y Y P	28 -	4,190
26 -	V X X V	25 -	2,620
27 -	V X X V	45 -	7,490
28 -	J A	222 -	30,300
"	V	535 -	90,060
" -	W R	12 -	1, 570

1893.		May 1893.	
May 17,	A B L	695	105,700
18,	N L L	38	6,470
22,	V 1 4	47	8,740
23,	Y Z	1, 124	176,460
29	H V K	11	1,370
"	W E S	55	12,090

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Plaintiff's Exhibit G.

A S A

J E N

V 1 1 Nov.28,1888-Cut by J.C.Pope- owned by State of Minnesota.

V XX

H A W

J N

W N W

4 7

V ℓ

S 1 D

Y Y P

V X X V

J A

W R Apr.14,1892- cut and owned by A.D.Merriam & Co.

A B L

N L L

V 1 4

Y Z

H V K

W E S

251 PLAINTIFF'S EXHIBIT H.

I hereby adopt the following mark for logs on the Chippewa river and its tributaries, and will claim all logs marked thus, T T T, for a bark mark, and thus, G A B, for an end stamp.

Dated Nov. 17th, 1891.

VALLEY LBR. CO.

STATE OF WISCONSIN, } ss:
County of Chippewa, }

I, D. L. McKay, do hereby certify that I am the lumber inspector of district No. 6, in the State of Wisconsin, having my office at the city of Chippewa Falls, in said State; that as such lumber inspector I am the keeper of the record of all log marks recorded in said lumber district; that I have carefully compared the copy of record of log marks hereto attached with the original record thereof, found on page 29 of Log Ledger No. 4, such book being one of the books in said lumber inspector's office and now in my legal custody as such lumber inspector and a record in my office, and that the same is a true and correct copy of the record of such log marks and of the whole thereof and a correct transcript therefrom and of the date of recording same.

In witness whereof I have hereunto set my hand, this office having no seal, this 14th day of August, A. D. 1897.

D. L. McKAY,
Lumber Inspector of District No. 6, in the State of Wisconsin.

252 PLAINTIFF'S EXHIBIT J.

I hereby adopt the following marks for logs on the Chippewa river and its tributaries, and will claim all logs marked thus, Z M Z, for a bark mark, and thus, Z M Z, for an end stamp.

Dated Nov. 16, 1889.

(Sgs.) S. SERLEY.

STATE OF WISCONSIN, } ss:
County of Chippewa, }

I, D. L. McKay, do hereby certify that I am the lumber inspector of district No. 6, in the State of Wisconsin, having my office at the city of Chippewa Falls, in said State; that as such lumber inspector I am the keeper of the record of all log marks recorded in said lumber district; that I have carefully compared the copy of record of log marks hereto attached with the original record thereof, found on page 13 of Log Ledger No. 4, such book being one of the books in said lumber inspector's office and now in my legal custody as such lumber inspector and a record in my office, and that the same is a true and correct copy of the record of such log marks and of the whole thereof and a correct transcript therefrom and of the date of recording same.

In witness whereof I have hereunto set my hand, this office having no seal, this 14th day of August, A. D. 1897.

D. L. McKAY,
Lumber Inspector of District No. 6, in the State of Wisconsin.

253 EXHIBIT A 1.

STATE OF MINNESOTA, }
County of Wabasha, } *ss:*

The surveyor general of logs & lumber for the fourth district of Minnesota hereby certified—

That all the logs mentioned in the scale bill hereto affixed ran out of the Minnesota Boom Company during the month of June, 1893.

That he duly surveyed all said logs running out of said boom during said month.

That the true aggregate amount due to him for his said survey and upon said scale bill is the sum of $9,153.10.

That he has said lien upon said logs and on the marks thereof mentioned in said scale bill respectively at the rate of five cents per thousand feet for each thousand feet of said logs.

That he has surveyed and scaled said logs, relying upon and in reliance on his said lien.

That he hereby claims a lien on said logs, scale bill, and log marks for said aggregate sum of $9,153.10, and on each one of said log marks respectively for five cents per thousand feet for each thousand feet of logs bearing such mark that was so surveyed during said month.

JOHN H. MULLEN,
Surveyor General L. & L., 4th Dist., Minn.

254 EXHIBIT B 1.

WABASHA, *July 3rd*, 1893.

The Minnesota Boom Company Dr. to John H. Mullen, surveyor general of logs & lumber, 4th district, State of Minnesota.

To surveying 183,062,290 feet in logs, at West Newton boom, for the month ending June 30th, 1893, the same being statutory fee therefore at the rate of 5c. per thousand $9,153.10

(Endorsed:) Bill of exceptions. Filed Dec. 23rd, 1897. Henry D. Lang, clerk.

255 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff in Error,
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA, Defendants in Error. } At Law.

Now comes the above-named plaintiff in error, Lindsay & Phelps Company, and assigns the following errors, which said plaintiff in error alleges were, upon the trial and determination of said cause, committed by the court, and wherefrom the judgment was rendered in the above-entitled action on the 19th day of August, 1897, in favor of the above-named defendants in error and against this plaintiff in error, for the return of the following-described property, to wit:

One full brail of pine logs, numbered 2222, containing 1,064 logs, which scale 134,160 feet.

One full brail of pine logs, numbered 2228, containing 1,007 logs, which scale 132,120 feet.

One full brail of pine logs, numbered 2272, containing 1,071 logs, which scale 133,650 feet.

One narrow brail of pine logs, numbered 1030, containing 596 logs, which scale 70,650 feet.

One narrow brail of pine logs, numbered 1737, containing 658 logs, which scale 68,130 feet.

One full brail of pine logs, numbered 2304, containing 1,046 logs, which scale 138,230 feet.

One full brail of pine logs, numbered 2407, containing 1,004 logs, which scale 143,270 feet.

One full brail of pine logs, numbered 2387, containing 1,020 logs, which scale 141,380 feet.

256 One full brail of pine logs, numbered 2470, containing 990 logs, which scale 144,270 feet.

Or in case of the failure to return said property for the sum of fifteen thousand six hundred thirty-two dollars and thirteen cents ($15,632.13), with costs and disbursements, to be taxed, should be in all things reversed and set aside.

I.

Said court erred in admitting the articles of incorporation of the Minnesota Boom Company (Exhibit No. 1), which, omitting signatures and acknowledgements, is as follows:

Articles of Incorporation of the Minnesota Boom Company.

For the purpose of organizing a corporation under the laws of the State of Minnesota, we, the undersigned, do hereby associate ourselves as a corporation and adopt the following articles of incorporation:

Article I. The name of this corporation shall be the "Minnesota

Boom Company." The general nature of the corporate business shall be the construction, maintenance and use of booms, dams, and all other structures of any kind necessary or advantageous for the performance of the logging and lumbering business hereinafter described, upon the Mississippi river, or either bank thereof, between the mouth of the Chippewa river or a point opposite thereto, and the point where the easterly boundary line of the city of Winona meets the Mississippi river, or a point opposite thereto, and also upon, or on any side or bank of any slough, bayou, branch or part of the Mississippi river between or connecting with said river at any point between the extreme limits aforesaid. The business of the corporation, besides the construction, maintenance and operation of said structures shall be gathering, driving, booming, storing, assorting, rafting, brailing and otherwise handling, any and all logs, lumber and timber of any kinds, between the limits and upon the waters and territory above stated, for any and all persons
257 having any logs, lumber or timber upon any of said waters or within said territory, and this corporation shall have the right to charge and receive, and shall charge and receive, from any and all persons upon or in connection with those logs, lumber or timber — any work or services *are* done by this corporation, a proper sum and compensation by it to be fixed for such work or services and this corporation shall also do any other business incident to any part of the general business aforesaid.

The principal place of business of the corporation shall be the city of Winona, Winona county, Minnesota.

Article II. The time of the commencement of this corporation shall be April 16th, 1889, and it shall continue thirty years.

Article III. The amount of the capital stock of this corporation shall be one hundred thousand dollars ($100,000) and it shall be paid in at the time and in the amounts and manner prescribed by the board of directors. Such capital stock shall be divided into one thousand shares of one hundred dollars ($100) each.

Article IV. The highest amount of indebtedness or liability to which said corporation shall at any time be subject is fifty thousand dollars ($50,000).

Article V. The names of the persons forming this corporation are: William H. Laird, A. F. Hodgins, A. B. Youmans, James L. Norton, Andrew Hamilton and William Hayes. All of said corporators reside at the city of Winona, Minnesota.

Article VI. The government of said corporation and the management of its affairs shall be vested in a board of five directors, who shall be stockholders, and the corporate officers shall be a president, vice-president, secretary and treasurer, who shall be elected by the directors from their number. Said directors and officers shall hold their offices for one year and until their successors are elected and qualify. The board of directors shall have authority to adopt suitable by-laws for the government of the corporation. The annual meeting of the stockholders of this corporation shall be held
258 on the fourth Tuesday of May in each year and at this meeting the directors shall be elected. At their first meeting

after such annual meeting of stockholders, the directors shall annually elect the corporate officers.

The first directors of the corporation shall be William H. Laird, A. F. Hodgins, A. B. Youmans, James L. Norton, and William Hayes. The first officers shall be: William H. Laird, president; A. B. Youmans, vice-president; William Hayes, secretary, and A. F. Hodgins, treasurer. These first officers and directors shall hold office until the annual meeting of stockholders in May, 1889, and until their successors are elected and qualified.

In witness whereof, we have hereunto set our hands and seals at the city of Winona, Minnesota, on this 5th day of April, 1889.

in evidence against the objections of the plaintiff that said paper was immaterial, and to which ruling the plaintiff duly excepted.

II.

The court erred in admitting in evidence the commission of the defendant Mullen (a copy of which is attached to the bill of exceptions and marked "Exhibit No. 2") against the objections of the plaintiff that the said paper was immaterial and incompetent, and to which ruling the plaintiff duly excepted.

III.

The court erred in overruling plaintiff's objection, made during the trial of the cause and after the defendants' exhibits numbered 1 and 2, referred to in the foregoing assignment, of error I and II, had been received in evidence, to any further evidence under the answer in this cause upon the ground that said answer does not state any facts which constitute any defense to this action, and upon the ground that the same is immaterial, irrelevant, and incompetent, and to which ruling the plaintiff duly excepted.

259 IV.

The court erred in admitting in evidence the certified copy of the official oath and bond of the defendant Mullen (a copy of which is attached to the bill of exceptions) against the objection of the plaintiff that the said paper was immaterial and irrelevant, and to which ruling the plaintiff duly excepted.

V.

The court erred in receiving in evidence Defendants' Exhibit 3, each page of which is headed as follows:

SURVEYOR GENERAL'S OFFICE,
WABASHA, MINN., *June* —, 1893.

Bill of Pine Logs Scaled to the Mark for the Minnesota Boom Company During the Month of ——, 18—, *at West Newton Boom.*

Scaled by J. H. Mullen and deputies.

Date.	Mark.	Logs.	Feet.	Date.	Marks.	Logs.	Feet.

and upon each page of which are a large number of different log marks with the number of logs and number of feet of each mark set opposite such mark. The last page is signed:

JOHN H. MULLEN,
Surveyor General, Fourth District, Minnesota.

and shows a total of 1,265,741 logs, containing 183,062,299 feet. The whole paper contains 78 pages, and it is impracticable to incorporate it in this assignment of error, against the objection of the plaintiff that the same was incompetent, and to which ruling the plaintiff duly excepted.

VI.

The court erred in receiving in evidence Defendants' Exhibit 4, a paper containing 70 pages of written and printed matter similar to Exhibit 3, except it purports to be a scale bill for the month of May, and shows a total of 254,996 logs, containing 38,716,510 feet, and which exhibit it is also impracticable to incorporate in this assignment of error, against the objection of the plaintiff that
260 the same was incompetent; to which ruling the plaintiff duly excepted.

VII.

The court erred in receiving in evidence Defendants' Exhibit 5, *to* the material portion whereof is as follows:

"To the Minnesota Boom Company, the managing agent thereof, and whomsoever it may concern:

You and each of you are hereby notified that the undersigned, the surveyor general of logs, lumber, and timber of and for the fourth district of the State of Minnesota, has seized and taken actual possession of all the saw-logs contained in the fourteen brails of logs numbered as follows—that is to say, 2470, 2387, 2407, 1637, 2304, 2444, 2469, 2306, 2228, 2222, 2272, 2406, 2310, 2229, which said brails of logs are now located along the west or Minnesota shore of the Mississippi river immediately above the village of Minneiska, in Wabasha county, in said State, and the saw-logs in which said brails bear the log marks and contain the number of feet board measure of each log mark expressed and set forth in Exhibit 'A' hereof.

You and each of you are hereby further notified that said seizure has been made and possession taken by said surveyor general to enforce payment of certain fees of said surveyor general for surveying the logs running out of the boom of the said Minnesota Boom Company during the month of June, 1893; which fees amount to the sum of ninety-one hundred fifty-three and $\frac{10}{100}$ dollars ($9,153.10).

JOHN H. MULLEN,
Surveyor General of Logs, Lumber, and Timber for the Fourth District of the State of Minnesota."

And here follows a description of the 14 brails of logs, with the log marks, number of logs, and number of feet of each mark as

claimed to exist by the defendant Mullen, against the objection of the plaintiff that said paper was incompetent, immaterial, and irrelevant; to which ruling the plaintiff duly excepted.

VIII.

The court erred in receiving in evidence Defendants' Exhibit 6, the material portion thereof is precisely like Exhibit 5, referred to in the foregoing assignment of error VII, except that the claim is made for scaling during the month of May, 1893, and the fees claimed amount to the sum of $1,935.82, against the objection of the plaintiff that the same was incompetent, irrelevant, and immaterial; to which ruling the plaintiff duly excepted.

261 IX.

The court erred in refusing to permit the plaintiff to show by the witness Mullen on his cross-examination that at no time during the period covered by Defendants' Exhibits 3 and 4 was there any record in his office of any log mark, and in sustaining defendants' objection to such testimony on the ground that the same was immaterial; to which ruling the plaintiff duly excepted.

X.

The court erred in admitting the evidence of William Foreman, as follows:

"Q. You may state whether or not there were any obstructions put in your way by the boom company to the work that the surveyor general was doing or attempting to do there.

"The plaintiff objected to the question as immaterial and incompetent.

"A. There was; yes, sir.

"Q. You may state what.

"The plaintiff objected to said question as immaterial and incompetent.

"A. By their men getting on and being in the way when we started. We would have to wait until they got five courses ahead, and then, if our men weren't there, they would run them out and run them off down the river."

And in refusing to strike out the last answer of the witness as not responsive to the question and as immaterial and irrelevant; to which ruling the plaintiff duly excepted.

XI.

The court erred in admitting, against the objection of the plaintiff, the following testimony of John H. Mullen:

(Mr. Mullen had testified that he knew Mr. Thomas Irvine, who was the secretary of the Minnesota Boom Company in the year 1893, and that he had a conversation with him (Irvine) as to who was in charge there.)

262 "Q. You may state what he said as to who was in charge of the Minnesota Boom Company.

"The plaintiff objected to this question as immaterial and incompetent.

"A. He said Mr. Scott was—George Scott."

To which ruling the plaintiff duly excepted.

XII.

The court erred in admitting, against the objection of the plaintiff, the following testimony of William Foreman:

(This witness had also testified that he knew Thomas Irvine and that he was present at a conversation between Irvine and the defendant Mullen in 1893 in regard to the management of the boom down at West Newton; that he would not be positive that the name of the Minnesota Boom Company was mentioned, but the name "boom company" was mentioned, and that something was said about Mr. Scott.)

"Q. What was said?

"The plaintiff objected to this question as immaterial and incompetent.

"A. Mr. Irvine stated that in his absence Mr. Scott had full control there."

To which ruling the plaintiff duly excepted.

XIII.

The court erred in denying plaintiff's motion for judgment made at the close of defendants' case upon the ground that, from all of the evidence in the case as it then stood, the defendants had failed to show any interest in or lien upon or right to possess the property described in the complaint in the action now on trial.

To which ruling the plaintiff duly excepted.

XIV.

The court erred in sustaining the defendants' objection to the following question put to the witness Douglass:

263 (This witness, who was manager of the booms at West Newton, had testified that two-thirds of the logs that come through the boom belonged to the Mississippi River Logging Company and the Chippewa Logging Company, and that there were several hundred different marks belonging to these companies, and that all these marks and all of the logs of these several hundred marks were put into one pocket or one set of pockets as they came through. No attempt was made to sort those marks, and that they would not have had room to assort the logs if all of these marks had had to be assorted severally as their marks were.)

"Q. Would the delay that would have been occasioned have been such as to prevent getting anywhere near the full amount of logs through in any one season?

"The defendants objected to the question as immaterial."

To which ruling the plaintiff duly excepted.

XV.

The court erred in sustaining the defendants' objection to the following question put to the witness Douglass:

"Q. Now, I will ask you this question: State, if you know, who, during all the time for the several days set opposite the two marks on Exhibit 9, was treated and recognized by you and the men under you as the owner of these two marks and to whom the logs bearing these two marks were delivered.

"The defendants objected to the question as immaterial and as calling for the conclusion of the witness.

"The court said: What would the testimony tend to show?

"Counsel for plaintiff stated: The testimony tends to show that during all of these years these logs running through this boom were treated as belonging to the Lindsay & Phelps Company, and to follow it up by showing that no one else has ever made any claim to them, and then we shall offer to show that none of these logs with that mark ever got into that boom.

263½ "DEFENDANTS' COUNSEL: We object to it because it is not competent testimony to prove title, and, as far as ownership is concerned, the court has held that ownership has been proved.

"The court then sustained the objection."

To which ruling the plaintiff duly excepted.

XVI.

The court erred in sustaining the defendants' objection to the following question put to the witness Douglass:

"Q. Has any one else other than the Lindsay & Phelps Company ever made any claim there at the boom to any logs bearing either of the first two marks on this Exhibit 9?

"Defendants' counsel objected to this question as immaterial, incompetent, and no foundation laid."

To which ruling the plaintiff duly excepted.

XVII.

The court erred in sustaining the defendants' objection to the following question put to the witness Douglass:

"Q. Were there any brails of logs taken out of any other pockets and dropped down the river until it was necessary to do so in order to carry on the business there?

"To which question the defendant objected as calling for the conclusion of the witness."

To which ruling the plaintiff duly excepted.

XVIII.

The court erred in sustaining the defendants' objection to the following question put to the witness Levi P. Smith:

"Q. You may state, if you know, how these logs are scaled that are taken in by these companies that you have named at Chippewa Falls and Eau Claire.

"The defendants objected to the question as immaterial."

And in refusing to permit the plaintiff to prove by this witness that all of the logs of the Chippewa Logging Company and
264 of the Mississippi River Logging Company, which come down the Chippewa river, whether they are taken at Chippewa Falls or Eau Claire by members of the Chippewa Logging Company or whether they are assorted and divided among the members at West Newton, are scaled full—that is, without making any deduction whatever for rot, crook, or other defects that may appear to be in the logs—and which testimony plaintiff proposed to follow by the testimony of other witnesses and by the testimony of this witness, showing that the scale is made in this manner for the purpose of making an equitable division among the members of the Chippewa Logging Company and the Mississippi River Logging Company.

All of which testimony was objected to by the defendants as immaterial.

To which ruling the plaintiff duly excepted.

XIX.

The court erred in sustaining the objection of the defendants to the following question put to the witness Artemus Lamb:

"Q. I wish you would state the method of doing business by the Chippewa Logging Company from the time that the logs were cut in the woods until they were sorted out of the booms, or wherever they were sorted, and how the division is made between the various members of that company of the logs which belong to that company.

"To which question the defendants objected as immaterial and *immaterial and* incompetent, as being a question which the court had already ruled out, and also because this matter is carried out by the books of the company to which the defendants have no access."

And also in refusing to permit the plaintiff to show by this witness:

"That the logs are cut from timber owned by the Chippewa Logging Company by their own men and teams or by jobbers and delivered in the waters of the Chippewa, and that they were driven by what is termed a driving company down to Eau Claire, on the Chippewa; that when they got to Chippewa Falls and Eau Claire
265 certain members of the Chippewa Logging Company are entitled to a certain percentage of the logs cut or bought the previous year. It is the custom to take into the boom a certain number of hours and days, and then they are passed down the river for a certain number of hours and days, which is determined by the per cent. that belongs down the river and by the per cent. that belongs at Eau Claire. Then there are scalers appointed by the Chippewa Logging Company for each mill which belongs to the pool. This has reference to the Chippewa Falls and Eau Claire members. They are at the foot of the skip and scale all logs as they come. These logs, then, that belong to the Mississippi River Logging Company are brought on to West Newton, Minnesota, and there they are boomed and rafted by the Mississippi River Logging Company

and are scaled by scalers appointed by the company by the same methods that are used at Eau Claire. The method of scaling at Eau Claire is what is termed the full scale—that is, without making any deductions for defects—and the same thing is done at West Newton—that is, for adjustment between the members of the company—that is, between the Eau Claire people and the Mississippi River Logging Company; that the proportion or percentage of the logs that each member of the Mississippi River Logging Company is entitled to take is arrived at by the amount of their subscription to the original capital stock of the company. It was not subscribed in dollars and cents, but in so many million feet per year, practically in proportion of their holding in the company; that the method of scaling what is known as the pool logs, according to the full scale, is the result of an agreement between all the members of the Chippewa Logging Company and all of the stockholders.

"To which testimony so offered the defendants objected as immaterial."

To which rulings the plaintiff duly excepted.

266 XX.

The court erred in sustaining the defendants' objection to the following question put to the witness Artemus Lamb:

"Q. Would it be possible to make a fair adjustment between the Eau Claire and the Chippewa Falls members of the pool company, whose logs are taken out at Eau Claire and Chippewa Falls, and the down-river members of the company if the logs that come through above West Newton boom were scaled what is termed straight and sound—that is, by the individual scalers using their judgment in making such deductions as would be necessary to make the logs sound, merchantable logs?

"To which question the defendants objected as incompetent and immaterial and calling for the conclusion of the witness."

To which ruling the plaintiff duly excepted.

XXI.

The court erred in sustaining the defendants' objection to the following question put to the witness Artemus Lamb:

"How long has the business of these companies been conducted in the same way that it was conducted in 1893, prior to that time?

"To which question the defendants objected."

And in refusing to permit the plaintiff to show by this witness that the Mississippi River Logging Company had conducted the business in the same manner for 22 years, and that the pool had been in existence about 13 years up to that time.

Which testimony so offered was objected to by the defendants as immaterial.

To which rulings the plaintiff duly excepted.

XXII.

The court erred in sustaining the defendants' objection to the following question put to the witness Artemus Lamb:

"And were they handled in the same way there" (referring to Beef slough)?

To which ruling the plaintiff duly excepted.

267 XXIII.

The court erred in sustaining the defendants' objection to the following question put to the witness G. W. Cable:

"Q. Did your company (referring to the Cable Lumber Company) make some arrangement or agreement with the Mississippi River Logging Company to scale such logs as they might have coming through that boom that year?"

And in refusing to permit the plaintiff to show by this witness that before the business of assorting and rafting the logs at West Newton boom commenced in the summer of 1893 an arrangement was made between the Mississippi River Logging Company and the Cable Lumber Company by which the Mississippi River Logging Company agreed to scale all of the logs of the Cable Lumber Company for a fee which was agreed upon, and the Cable Lumber Company agreed that the Mississippi River Logging Company might scale them.

To which ruling the plaintiff duly excepted.

XXIV.

The court erred in sustaining the defendants' objections to the following question put to the witness Frank W. Mueller:

"Q. In 1893 and prior to that time where did you get your logs to manufacture?

"To which question the defendants objected as immaterial, because the deponent is not a party to any of these causes."

And in refusing to permit the plaintiff to show by this witness that all of the logs of the firm of C. Mueller & Sons during the year 1893 were cut on their own lands on the Chippewa river or bought on the banks of the Chippewa river and run down through this West Newton boom and taken to their mills at Davenport to be manufactured.

The plaintiff offered at the same time to follow that testimony up by the testimony of a large number of other witnesses that their logs came through in the same way, and by evidence showing that they were substantially all of the logs that did go through the boom.

To which ruling the plaintiff duly excepted.

268 XXV.

The court erred in sustaining the defendants' objection to the following question put to the witness D. J. Batcheldor, a member of the firm of Gardner, Batchelder & Wells, who had charge of their logging business during the year 1893:

"Q. Where did they get their logs?

"To which question the defendants objected as immaterial, because these parties are not parties to the suit in any way."

And in refusing to permit the plaintiff to show by this witness that all of Gardner, Batchelder & Wells' logs that were rafted from West Newton booms came out of the different tributaries of the Chippewa from different streams, and that that had been true for a number of years before 1893.

Which testimony so offered was objected to by the defendants as incompetent and immaterial.

To which rulings the plaintiff duly excepted.

XXVI.

The court erred in refusing to permit the plaintiff to show by this witness that substantially the same agreement was made between the firm of Gardner, Batchelder & Wells and the Mississippi River Logging Company with reference to the scaling of the logs of that firm that came through the West Newton booms in 1893 as was made with the Cable Lumber Company.

Which testimony was objected to by the defendants as immaterial.

To which ruling the plaintiff duly excepted.

XXVII.

The court erred in refusing to receive in evidence the depositions of William E. Sawyer, George H. Ray, and Lucius Coleman, for the purpose of showing that the logs of the Sawyer & Austin Lumber Company, of which Mr. Sawyer was secretary, and the logs of the Gem City Saw Mill Company and the Hannibal Saw Mill
269 Company, which were represented and controlled by the witness George H. Ray, and the logs of C. L. Coleman that came through the West Newton booms in 1893 were cut upon the Chippewa river and destined, all of them, to be taken to the saw-mills of the Sawyer & Austin Lumber Company at La Crosse, the Gem City Saw Mill Company at Quincy, Illinois, the Hannibal Saw Mill Company at Hannibal, Missouri, and the C. L. Coleman Saw Mill Company at La Crosse, Wisconsin; that each of those owners named made an agreement with the Mississippi River Logging Company to scale all of their logs that might come through those booms in that year by an agreement substantially similar to the agreement which had been testified to by Mr. Davidson and by several other witnesses, this testimony to be followed by testimony showing that the logs of those parties just named and of the other parties whose depositions have been excluded by the court were substantially all of the logs that came through the West Newton boom in 1893.

To which testimony and all thereof the defendants objected as immaterial and incompetent.

To which ruling plaintiff duly excepted.

XXVIII.

The court erred in sustaining the defendants' objection to the following question put to the witness John Paul, the president of the John Paul Lumber Company:

"Q. In and prior to the year 1893 what proportion of the logs that were sorted out and delivered to you at the sorting works were sold by you, and what proportion manufactured to your mills in La Crosse?

"Which question was objected to by the defendants as immaterial and incompetent."

And in refusing to permit the plaintiff to show by this witness that 90 per cent. of the logs referred to in the question were manufactured by the John Paul Lumber Company at La Crosse.

XXIX.

The court erred in sustaining the defendants' objection to the following question put to the witness F. Weyerhauser, the president of the Mississippi River Logging Company:

"Q. When the Mississippi River Logging Company was organized who were the members of it?

"Which question was objected to as immaterial."

And in refusing to permit the plaintiff to show by this witness that the members of the Mississippi River Logging Company, some eight or ten of them in all, were all lumbermen of manufacturers of lumber, residing or having their places of business in the States of Iowa, Illinois, and Minnesota, and that the purpose and the sole purpose of the organization was to facilitate and render less complicated the driving and handling of their logs after they were put into the Chippewa river, and perhaps the Black river, and that the general course of business of that company has always been substantially that all of the logs that were cut by or for the company were run down the Chippewa river, first, to Beef slough, and afterwards to West Newton slough when the work was moved over there; that the logs belonging to the company were all sorted and put in one place under one head, although there were a great many different marks, and that as fast as those logs were sorted out they were divided among the members and taken away by them to their several places of manufacture, according to the interest of each of the members in the company, which interest was determined by the amount contributed by each of the members in any one year to the fund of the company, which was used in acquiring the logs which it did acquire, and that the logs of the Mississippi River Logging Company and of the Chippewa Logging Company below Eau Claire constituted at least two-thirds of all the logs that came down that river in every year, including the year 1893.

Which testimony so offered was objected to by the defendants as immaterial.

To which ruling the plaintiff duly excepted.

271 XXX.

The court erred in sustaining the defendants' objection to the following question put to the witness F. Weyerhauser:

"Q. During the year 1893 and years prior to that time, as far back as 1889, you may state whether or not all of the logs that came out of the Chippewa river into the West Newton booms, outside of the logs that were owned by the Chippewa Logging Company and the Mississippi River Logging Company, came there under any agreement or arrangement with the several owners; and, if so, what the agreement was.

"Which question was objected to as immaterial."

And in refusing to permit the plaintiff to show by this witness that all of the logs that came down the Chippewa river, that did not belong to the Mississippi River Logging Company or to the Chippewa Logging Company, were turned over to the Mississippi River Logging Company, and there was an agreement by which the company was to drive the logs down the Chippewa, boom and assort them, and raft them and deliver them rafted to their respective owners at the foot of the West Newton boom.

Which testimony so offered was objected to by the defendants as incompetent and immaterial.

To which rulings the plaintiff duly excepted.

XXXI.

The court erred in sustaining the defendants' objection to the following question put to the witness John H. Mullen:

"Q. When you commenced scaling logs at West Newton, or your deputies did, in the spring of 1893, you did not have any record in your office of log marks, did you?"

And in refusing to permit the plaintiff to show by this witness that he did not have in his office, either at the time he commenced scaling or at any other time in 1893, any record of log marks which had been made in pursuance of the provisions of the statutes of this State.

Which testimony so offered was objected to by the defendants as immaterial.

272 To which rulings the plaintiff duly excepted.

XXXII.

The court erred in sustaining the defendants' objection to the question put to the witness Hugh Stewart, who produced a paper marked "Plaintiff's Exhibit F," a copy of which is attached to the bill of exceptions, and who testified that he made out the paper and that he got the dates and marks and the number of logs and number of feet set down thereon out of the May and June scale bills of the surveyor general—that is, Defendants' Exhibits 3 and 4—and that in the performance of his duties he saw every year all of the marks of the logs that were turned into the office at the West Newton booms by the various scalers.

"Q. Did you ever see any of the marks that are on this Exhibit F?"

And in refusing to permit the plaintiff to show by this witness that during all the time which he has been employed in the office of the West Newton booms he never saw any of the log marks set forth in Plaintiff's Exhibit "F;" this testimony to be followed by the evidence of the scalers for the Chippewa Logging Company that the logs were not in fact in the brails of logs in which they may appear to be by the tally-sheets in the surveyor general's office, and by the evidence of the men who had charge of the catch-marking of the logs, showing that these marks were marks that were not known to those booms, and that it was the duty of more than thirty men, if any such marks came to him, to tie it up with a line and hold it until his attention was called to it, to give directions where it should go.

To which rulings the plaintiff duly excepted.

XXXIII.

The court erred in sustaining the defendants' objections to the following question put to the witness Hugh Stewart:

273 "Q. Is there or has there been any attempt made on the part of owners of these stray logs to follow the logs themselves and take them out of the brails where they happened to be?

"Which question was objected to by the defendants as immaterial; to which ruling the plaintiff duly excepted.

XXXIV.

The court erred in sustaining the defendants' objection to the following question put to the witness Henry Phitts:

"Q. I show you Plaintiff's Exhibit 'F' and ask you to look at the marks upon that exhibit and see whether you ever saw any of them before."

And in refusing to permit the plaintiff to show by this witness that he never saw any of the marks on this Exhibit F, and that it would be impossible for the number of logs which is said to have been marked with these marks, which number exceeds a hundred, to have passed through this boom on any one day (as it appears from these scale bills offered in evidence that they did do) without the attention of this witness being called to it, and that they did not, in fact, pass through there.

Which testimony so offered was objected to by the defendants as immaterial and incompetent.

To which rulings the plaintiff duly excepted.

XXXV.

The court erred in sustaining the defendants' objection to the following question put to the witness James C. Daly:

"Q. Were the men who were employed under your supervision there men who had ever worked at scaling logs at West Newton or Beef slough?

"To which question the defendants objected as immaterial."

And in refusing to permit the plaintiff to show by this witness—

"That there were over thirty scalers employed by the de-
274 fendant Mullen to do the scaling at West Newton during the summer of 1893 and half as many tallymen, and that all the tallymen, with the exception of six, and all of the scalers were men who were inexperienced and had never had any experience in scaling logs at the West Newton booms, and that by reason of the great number of marks that are rafted together for the Chippewa Logging Company and the Mississippi River Logging Company it is impossible for an inexperienced scaler with an inexperienced tallyman to make any correct scale and return of the logs and the marks thereon, and that, as a matter of fact, the scales or pretended scales made there by the surveyor general's deputies were grossly inaccurate."

Which testimony so offered was objected to by the defendants as immaterial and incompetent.

To which ruling the plaintiff duly excepted.

XXXVI.

The court erred in sustaining the defendants' objections to the following question put to the witness Colin McMillan, and who testified that he had charge of one of the crews of men that were scaling at the West Newton booms in 1893 for the defendant Mullen:

"Q. State whether any of the men under you in scaling these logs scaled all logs 24 feet and over in length as two logs.

"Which question was objected to by the defendant as immaterial."

To which rulings the plaintiff duly excepted.

XXXVII.

The court erred in sustaining the defendants' objection to the following question put to the witness Hugh Stewart:

"Q. Have you made a computation for the purpose of being able to testify what proportion of the logs that came through the West Newton boom in the summer of 1893 and the years prior thereto belonged to parties who resided outside of either the State of Minnesota or Wisconsin?

275 "Which question was objected to by the defendants as immaterial."

To which ruling the plaintiff duly excepted.

XXXVIII.

The court erred in sustaining the objection of the defendants to the following question put to the witness Hugh Stewart:

"Q. Have you made a computation, so that you can testify as to the amount of logs that were rafted and scaled through the West Newton boom in the summer of 1893 that were not claimed by

anybody and that you had no means of knowing to whom they did belong?

"This question *on* being objected to by the defendants as immaterial, the court asked:

"How is that material?

"Plaintiff's counsel stated: It is material in this way: We expect to show by this witness that out of 500,000,000 of logs that came through that summer, all of the logs except 120,000 belonged to parties that were engaged in logging on the Chippewa river.

"And the court, after such statement, sustained the objection."

To which ruling the plaintiff duly excepted.

XXXIX.

This witness having testified that what are known as "pick-up logs" are logs that are picked up along the river below the West Newton booms, the following question was asked him:

"Can you tell how many logs other than those that were recognized as belonging to parties engaged in logging on the Chippewa river were picked up and scaled by the Mississippi River Logging Company between these West Newton booms and La Crosse during the summer of 1893?

"Plaintiff's counsel making in connection with this question the following statement: We think it is material upon this proposition: We have claimed, and shall claim, that substantially all logs, if not quite all of them (the amount is impossible to determine),
276 that go into the West Newton booms that do not come from the Chippewa river are logs that escaped from rafts while passing down the river from Lake Pepin to the upper limits of the West Newton boom; and this testimony is offered for the purpose of substantiating that claim, by showing that the proportion of that class of logs that are found below West Newton is larger in about the same proportion with those that come into or are rafter out of those booms, and that the difference between these two amounts is substantially like the difference between the mileage of the river from Lake Pepin to the West Newton booms and from the West Newton booms to La Crosse.

"This question was objected to by the defendants as immaterial, and the court sustained the objection."

To which ruling and order the plaintiff duly excepted, and now assigns such ruling as error.

XL.

The court erred in overruling the plaintiff's objection to the admission in evidence of the two pages of Plaintiff's Exhibit D which are marked "A" and "B," and are Exhibits "A 1" and "B 1" in the record.

To which ruling the plaintiff duly excepted.

XLI.

The court erred in refusing to make the first declaration of the law, as requested by plaintiff at the close of the testimony, as follows:

"That it has not been shown that the logs for which defendant claims fees for scaling in this cause ever ran into or through any boom chartered by law, and therefore the defendants have no right to the fees claimed or to any lien on the plaintiff's logs therefor."

277 To which ruling the plaintiff duly excepted.

XLII.

The court erred in refusing to make the second declaration of law, as requested by the plaintiff at the close of the testimony, as follows, to wit:

"That the defendants have not shown themselves entitled to any lien upon the plaintiff's logs:"

"*a.* Because the scale bills, Defendants' Exhibits 3 and 4, are not evidence of the scaling of the logs therein described.

"*b.* Because it appears affirmatively that the said scale bills were not, nor were either of them, recorded in any book in the office of the surveyor general of that district.

"*c.* Because it appears that a very great proportion of the logs mentioned in these scale bills, Defendants' Exhibits 3 and 4, were not the plaintiff's logs, and that the work done was not done at the request of the plaintiff or anybody else.

"*d.* Because the pretended records of said scale bills were not in fact any record whatever.

"*e.* Because it does not appear that any of the log marks shown on defendants' scale bills, Exhibits 3 and 4, were ever recorded in the office of the surveyor general of logs and lumber of the 4th district of the State of Minnesota in accordance with the provisions of title 3 of chapter 32, General Statutes of the State of Minnesota."

To which ruling the plaintiff duly excepted.

XLIII.

The court erred in refusing to make the third declaration of law requested by the plaintiff at the close of the testimony, as follows, to wit:

278 "That the statute under which the defendants claim a right to scale these logs and recover fees therefor and to a lien on the plaintiff's logs therefor is, as applied to the place and business where this scaling was done, an attempted regulation by the State of interstate commerce, and is unconstitutional and void, being in contravention of subdivision 4 of section 8 of article 1 of the Constitution of the United States."

To which ruling the plaintiff duly excepted.

XLIV.

The court erred in entering judgment in favor of the defendants and against the plaintiff.

MOSES E. CLAPP,
Attorney for Plaintiff in Error.
THOMAS SIMPSON,
N. H. CLAPP,
Of Counsel for Plaintiff in Error.

(Endorsed:) Assignments of error. Filed Jan'y 8th, 1898. Henry D. Lang, clerk.

279 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff in Error,
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA, Defendants in Error. } At Law.

Know all men by these presents that we, Lindsay & Phelps Company, a corporation, of Davenport, in the State of Iowa, and Matthew G. Norton, of Winona, Minn., and Frederick Weyerhauser, of the city of St. Paul, in the State of Minnesota, are held and firmly bound unto John H. Mullen and the State of Minnesota in the full and just sum of forty thousand dollars ($40,000.00), to be paid to the said John H. Mullen and the State of Minnesota, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 3rd day of January, in the year of our Lord one thousand eight hundred ninety-eight.

Whereas lately, at the general July term of the circuit court of the United States for the district of Minnesota, third division, in a suit depending in said court between the said Lindsay & Phelps Company, plaintiff, and John H. Mullen and The State of Minnesota, defendants, judgment was rendered on the 19th day of August, A. D. 1897, against the said plaintiff in favor of the said defendants, and the said plaintiff has obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant-, citing and admonishing them to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the date of said citation:

Now, the condition of this obligation is such that if the said Lindsay & Phelps Company, plaintiff in error, shall prose-
280 cute said writ of error to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; else to remain in full force and virtue.

In witness whereof said Lindsay & Phelps Company has caused these presents to be signed by its president, countersigned by its secretary, and its corporate seal to be hereunto affixed, and the said

Matthew G. Norton and F. Weyerhauser have hereunto set their hands and seals this 3rd day of January, A. D. 1898.

LINDSAY & PHELPS COMPANY,
By J. E. LINDSAY, *President.*

[CORPORATE SEAL.]

Countersigned:
J. B. PHELPS, *Secretary.*

In presence of—
GEO. F. LINDSAY,
HENRY HASKIN,
As to J. E. Lindsay.
B. W. BAWDEN,
WILLIAM POTTER,
As to J. B. Phelps.
W. HAYES LAIRD,
FRED S. BELL,
As to— MATTHEW G. NORTON. [SEAL.]
A. E. MACARTNEY,
N. H. CLAPP,
As to— F. WYERHAUSER. [SEAL.]

281 STATE OF IOWA, } ss:
County of Scott, }

On this 4th day of January, 1898, before me appeared J. E. Lindsay and J. B. Phelps, to me personally known, who, being each by me duly sworn, did say that the said J. E. Lindsay is the president and that the said J. B. Phelps is the secretary of the Lindsay & Phelps Company, the corporation above named, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said J. E. Lindsay and J. B. Phelps acknowledged said instrument to be the free act and deed of said corporation.

CHARLES DAVISON,
[NOTARIAL SEAL.] *Notary Public, Scott County, Iowa.*

STATE OF MINNESOTA, } ss:
County of Ramsey, }

On this 3rd day of January, A. D. 1898, before me personally appeared Frederick Weyerhauser, to me well known to be one of the persons named in and who executed the above and foregoing instrument, and acknowledged the execution thereof to be his free act and deed.

A. E. MACARTNEY,
[NOTARIAL SEAL.] *Notary Public, Ramsey Co., Minn.*

282 STATE OF MINNESOTA, } ss:
County of Winona, }

On this 6th day of January, A. D. 1898, before me personally appeared Matthew G. Norton, to me well known to be one of the

persons named in and who executed the above and foregoing instrument, and acknowledged the execution thereof to be his free act and deed.

FRED S. BELL,
Notary Public in and for Winona Co., Minn.

[NOTARIAL SEAL.]

STATE OF MINNESOTA, } ss:
County of Winona, }

Matthew G. Norton, being by me first duly sworn, deposes and says that he is one of the sureties named in and who executed the above and foregoing bond; that he is a resident and freeholder of the county of Winona, in the State of Minnesota, and worth the sum of forty thousand dollars ($40,000.00) over and above all his just debts and liabilities and exclusive of property exempt by law from seizure or sale on execution or attachment.

MATTHEW G. NORTON.

Subscribed and sworn to before me this 6th day of January, A. D. 1898.

FRED S. BELL,
Notary Public, Winona County, Minn.

[NOTARIAL SEAL.]

283 STATE OF MINNESOTA, } ss:
County of Ramsey, }

Frederick Weyerhauser, being by me first duly sworn, deposes and says that he is one of the sureties named in and who executed the above and foregoing bond; that he is a resident and freeholder of the county of Ramsey, in the State of Minnesota, and worth the sum of forty thousand dollars ($40,000.00) over and above all his just debts and liabilities and exclusive of property exempt by law from seizure or sale on execution or attachment.

F. WEYERHAUSER.

Subscribed and sworn to before me this 3rd day of January, A. D. 1898.

A. E. MACARTNEY,
Notary Public, Ramsey County, Minnesota.

[NOTARIAL SEAL.]

The above and foregoing bond is hereby approved both as to form and sureties.

WM. LOCHREN,
District Judge.

Dated January 8th, 1898.

(Endorsed:) Supersedeas bond. Filed Jan'y 8th, 1898. Henry D. Lang, clerk.

284 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff in Error,
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA, Defendants in Error. } At Law.

Petition for Writ of Error.

And now comes Lindsay & Phelps Company, plaintiff in error, and says that on the 19th day of August, A. D. 1897, this court entered judgment herein in favor of the above-named defendants, John H. Mullen and State of Minnesota, defendants in error herein, against this plaintiff in error, Lindsay & Phelps Company, for the return of the following-described property, to wit:

One full brail of pine logs, numbered 2222, containing 1,064 logs, which scale 134,160 feet;

One full brail of pine logs, numbered 2228, containing 1,007 logs, which scale 132,120 feet;

One full brail of pine logs, numbered 2272, containing 1,071 logs, which scale 133,650 feet;

One narrow brail of pine logs, numbered 1030, containing 596 logs, which scale 70,650 feet;

One narrow brail of pine logs, numbered 7337, containing 658 logs, which scale 68,130 feet;

One full brail of pine logs, numbered 2304, containing 1,046 logs, which scale 138,230 feet;

One full brail of pine logs, numbered 2407, containing 1,004 logs, which scale 143,270 feet;

One full brail of pine logs, numbered 2387, containing 1,020 logs, which scale 141,380 feet;

One full brail of pine logs, numbered 2470, containing 990 logs, which scale 144,270 feet;

285 & 286 Or, in case of the failure to return said property, for the sum of fifteen thousand six hundred thirty-two dollars and thirteen cents ($15,632.13), with costs and disbursements, to be taxed; in which judgment and the proceedings had prior thereunto in this case certain errors were committed to the prejudice of this plaintiff in error, all which will more in detail appear in the assignments of errors which are filed with this petition.

Wherefore this plaintiff in error prays that a writ of error issue in its behalf to the Supreme Court of the United States for the correction of errors so complained of, and that a transcript of the record, proceedings, and papers in this case, duly authenticated, may be sent to said Supreme Court of the United States.

MOSES E. CLAPP,
Attorney for Plaintiff in Error.
THOMAS SIMPSON,
N. H. CLAPP,
Of Counsel for Plaintiff in Error.

Dated this 6th day of January, 1898.

Petition granted and writ of error allowed upon giving bond for damages and costs in the sum of forty thousand dollars.

WM. LOCHREN,
District Judge.

(Endorsed:) Petition for writ of error and allowance. Filed Jan'y 8th, 1898. Henry D. Lang, clerk.

287 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff in Error,
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA, Defendants in Error. } At Law.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of Minnesota, third division, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Lindsay & Phelps Company, plaintiff, and John H. Mullen and The State of Minnesota, defendants, a manifest error hath happened, to the great damage of the said plaintiff, Lindsay & Phelps Company, as by its complaint appears, we, being willing that error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on or before the 7th day of February, A. D. 1898, to the end that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to laws and customs of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of said Supreme Court, this 8th day of January, in the year of our
288 Lord one thousand eight hundred and ninety-eight.

[Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.]

HENRY D. LANG,
Clerk of the Circuit Court of the United States for the District of Minnesota.

Allowed by—
WM. LOCHREN,
District Judge.

288½ [Endorsed:] Ent'd. 1153, E. law. Original. U. S. circuit court, district of Minnesota, third division. Lindsay and

Phelps Company, plaintiff in error, *vs.* John H. Mullen and The State of Minnesota, defendants in error. Writ of error. Due and personal service of the within — is hereby admitted this — day of ——, 189-. —— ——, attorney for ——. Thomas Simpson, Clapp & Macartney, attorneys for plaintiff in error, 24–27 National German-American Bank bldg., St. Paul, Minn. Filed Jan'y 8th, 1898. Henry D. Lang, clerk.

289 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff in Error,
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA, Defendants in Error. } At Law.

UNITED STATES OF AMERICA, *ss:*

To John H. Mullen and the State of Minnesota, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Minnesota, third division, wherein Lindsay & Phelps Company is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 8th day of January, in the year of our Lord one thousand eight hundred ninety-eight.

WM. LOCHREN,
District Judge.

290 [Endorsed:] Ent'd. 1153. E. law. Original. U. S. circuit court, district of Minnesota, third division. Lindsay and Phelps Co., plaintiff, *vs.* John H. Mullen and The State of Minnesota, defendants. Citation on writ of error. Due and personal service of the within citation is hereby admitted this 10th day of Jan., 1898. H. W. Childs, att'y general, attorney for *att'y for* def'ts. Thomas Simpson, Clapp & Macartney, attorneys for plaintiff, 24–27 National German-American Bank bldg., St. Paul, Minn. Filed Jan'y 10th, 1898. Henry D. Lang, clerk.

Received a copy of the within citation at St. Paul, Minn., this 10th day of January, 1898.

WARNER, RICHARDSON & LAWRENCE,
Attorneys for Defendants.

291 United States Circuit Court, District of Minnesota, Third Division.

LINDSAY & PHELPS COMPANY, Plaintiff in Error,
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA, Defendants in Error. } At Law.

The plaintiff above named having taken a writ of error to the Supreme Court of the United States to reverse the judgment rendered in this action, and it appearing to the court that it is necessary and proper that the originals of Defendants' Exhibit 3 and Plaintiff's Exhibit D, referred to in the bill of exceptions signed and settled in said cause, should be inspected in the Supreme Court upon said writ of error, it is therefore—

Ordered that the said original papers and exhibits be filed with the clerk of this court, and that upon making his return to the writ of error aforesaid said clerk transmit by express to the clerk of the Supreme Court the said original papers, and that said original papers remain in the custody of the clerk of the Supreme Court until the hearing therein upon said writ of error, to the end that upon such hearing said original papers may be inspected by the Supreme Court, and that said papers remain in the custody of said clerk of the Supreme Court until the further order of that court in the premises.

WM. LOCHREN, *Judge.*

Dated January 8th, 1898.

(Endorsed:) Order to send up certain original exhibits. Filed Jan'y 8th, 1898. Henry D. Lang, clerk.

292 UNITED STATES OF AMERICA:

CIRCUIT COURT OF THE UNITED STATES, *District of Minnesota,* } ss:

I, Henry D. Lang, clerk of said circuit court, do hereby certify and return to the honorable the Supreme Court of the United States that the foregoing, consisting of 291 pages, numbered consecutively from 1 to 291, inclusive, is a true and complete transcript of the records, process, pleadings, orders, final judgment, and all other proceedings in said cause, and of the whole thereof, as appears from the original records and files of said court; and I do further certify and return that I have annexed to said transcript and included within said paging the original citation, together with the proof of service thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Saint Paul, in the district of Minnesota, this 26th day of January, in the year of our Lord one thousand eight hundred and 98, and of the Independence of the United States the one hundred and 22nd year.

Seal U. S. Circuit Court, Dist. of Minnesota, Third Division.

HENRY D. LANG, *Clerk.*

293 Supreme Court of the United States.

LINDSAY & PHELPS COMPANY, Plaintiff in Error,
vs.
JOHN H. MULLEN and THE STATE OF MINNESOTA, Defendants in Error.

The parties to the above-entitled cause hereby stipulate that the following portions of the record returned in the above-entitled cause shall constitute the printed record, viz:

The complaint.
The writ of replevin and marshal's return thereon.
The answer of J. H. Mullen.
The reply.
The answer of the State of Minnesota.
The judgment.
The petition for a new trial.
The bill of exceptions and exhibits attached thereto.
The order denying the motion for a new trial.
The assignments of error.
The petition for writ of error.
The writ of error and citation.
The order to send up original exhibits, Defendants' Exhibit 3 and Plaintiff's Exhibit D.

MOSES E. CLAPP,
Attorney for Plaintiff in Error.
HENRY W. CHILDS,
Attorneys for Defendants in Error.

294 (Endorsed:) Case No. 16,791. Supreme Court U. S., October term, 1898. Term No., 239. Lindsay & Phelps Co., pl'ff in error, *vs.* John H. Mullen *et al.* Stipulation as to what shall constitute the printed record. Filed August 20, 1898.

Endorsed on cover: Case No. 16,791. Minnesota C. C. U. S. Term No., 239. Lindsay and Phelps Company, plaintiff in error, *vs.* John H. Mullen and The State of Minnesota. Filed February 7th, 1898.